

---

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 41 Session of  
2015

---

INTRODUCED BY THOMAS, JANUARY 21, 2015

---

REFERRED TO COMMITTEE ON STATE GOVERNMENT, JANUARY 21, 2015

---

AN ACT

1 Providing for the establishment of the Surety Bond Guarantee  
2 Fund Program; imposing duties on the Department of Community  
3 and Economic Development; establishing the Surety Bond  
4 Guarantee Fund; providing for contracts eligible for  
5 guarantee and for participation by disadvantaged businesses;  
6 and making an appropriation.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Surety Bond  
11 Guarantee Fund Program Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "Applicant." A disadvantaged business as defined in this  
17 act.

18 "Department." The Department of Community and Economic  
19 Development of the Commonwealth.

20 "Disadvantaged business." A small business which is owned or

1 controlled by a majority of persons, not limited to members of  
2 minority groups, who have been deprived of the opportunity to  
3 develop and maintain a competitive position in the economy  
4 because of social disadvantages.

5 "Fund." The Surety Bond Guarantee Fund established by this  
6 act.

7 "Program." The Surety Bond Guarantee Fund Program  
8 established by this act.

9 "Secretary." The Secretary of Community and Economic  
10 Development of the Commonwealth.

11 "Small business." A business in the United States which is  
12 independently owned, is not dominant in its field of operation  
13 and employs 250 or fewer employees.

14 "Surety bond." A guarantee in which the surety guarantees  
15 that the contractor or principal in the bond will perform the  
16 obligation stated in the bond. The term shall include the  
17 following types of bonds:

18 (1) Bid bonds that guarantee the bidder will enter into  
19 a contract and furnish the required payment and performance  
20 bonds.

21 (2) Payment bonds that guarantee payment from the  
22 contractor to parties who furnish labor, materials, equipment  
23 and supplies.

24 (3) Performance bonds that guarantee the contractor will  
25 fulfill the contract in accordance with terms and conditions.

26 (4) Ancillary bonds which may be incidental and  
27 essential to the performance of the contract.

28 Section 3. Establishment of program.

29 The Surety Bond Guarantee Fund Program is established in the  
30 department. The purpose of the program is to assist

1 disadvantaged businesses to competitively bid for governmental  
2 contracts.

3 Section 4. Surety Bond Guarantee Fund.

4 (a) Establishment.--The Surety Bond Guarantee Fund is  
5 established within the State Treasury for the purpose of  
6 assisting disadvantaged businesses to competitively bid for  
7 certain Commonwealth contracts.

8 (b) Fund administration.--The fund shall be administered by  
9 the department. All money in the fund shall be used to finance  
10 guarantees to bonding companies against percentages of losses  
11 sustained as a result of defaults by qualified disadvantaged  
12 businesses on a contract or project.

13 (c) Payments from fund.--Surety bond guarantees made with  
14 payments from the fund under the program shall not exceed the  
15 sum of \$1,000,000 for any one disadvantaged business.

16 Section 5. Contract eligible for guarantee.

17 (a) Eligibility.--A bond guaranteeing the performance of a  
18 contract shall be qualified and eligible for a surety bond  
19 guarantee under the program if:

20 (1) The bond is listed in the contract bonds section of  
21 the Surety and Fidelity Association of America's, or its  
22 successor's, "Manual of Rules, Procedures and Classifications  
23 for Fidelity, Forgery and Surety Bonds."

24 (2) The bond is required by the contract, invitation for  
25 bid or request for proposal.

26 (3) The bond is executed by a surety company that is  
27 acceptable to the Treasury Department and qualified by the  
28 department.

29 (4) The bond meets any other requirements established by  
30 the department.

1 (b) Required provision and notice of cancellation.--

2 (1) No bond shall qualify or be eligible for a guarantee  
3 under the program unless it contains a provision affirming  
4 that the bond shall not be canceled for any cause unless  
5 notice of intention to cancel is given to the department at  
6 least 30 days before the day upon which cancellation shall  
7 take effect.

8 (2) Cancellation of the bond shall not invalidate the  
9 bond regarding the period of time it was in effect.

10 Section 6. Disadvantaged business participation.

11 (a) Application process.--

12 (1) A disadvantaged business may apply to participate in  
13 the program by filing an application with the department.

14 (2) The department shall review the application to  
15 determine if the applicant is eligible to participate in the  
16 program within 30 days of receipt of the completed  
17 application. The department may extend the review period for  
18 an additional 30 days if the department determines that  
19 additional time is needed to complete the review process.

20 (3) The department shall notify the applicant in writing  
21 of the extended period, including the date the department  
22 will reach its final decision.

23 (b) Investigation.--

24 (1) Upon receipt of a completed application, the  
25 department may conduct an investigation of the applicant,  
26 including an investigation of its owners, officers,  
27 directors, principals or agents in order to determine whether  
28 the applicant is eligible to participate in the program.

29 (2) If the investigation finds and the department  
30 determines that an applicant is not eligible to participate

1 in the program, it shall notify the applicant in writing that  
2 the applicant will not be approved for program participation.  
3 The notification of ineligibility shall include the reason  
4 the application was not approved and that the applicant has  
5 the right to appeal the department's determination to the  
6 secretary within 30 days of the date of the notice.

7 (c) Criteria for determining eligibility.--An applicant  
8 shall be deemed eligible to participate in the program if the  
9 department determines that an applicant meets all of the  
10 following criteria:

11 (1) The applicant is a disadvantaged business certified  
12 by the department.

13 (2) The applicant's business is in the construction or  
14 building trade industry.

15 (3) The applicant has been actively operating its  
16 business for at least one year prior to the application date.

17 (4) The applicant has the experience and financial  
18 fitness appropriate of a qualified contractor.

19 (5) The applicant has agreed to subcontract no more than  
20 75% of the work to be performed under a qualified contract.

21 (6) The applicant has demonstrated an inability to  
22 secure bonding under normal market conditions.

23 (7) The applicant or one of its owners, officers,  
24 directors, principals or agents is not subject to section 7.

25 (8) The business meets any other program requirements  
26 that establish criteria for eligibility that the department  
27 shall adopt by regulation within 180 days of the effective  
28 date of this section.

29 Section 7. Criteria for denying program participation.

30 The department may deny an application for program

1 participation if it determines that the applicant or one of its  
2 owners, officers, directors, principals or agents:

3 (1) Made a material misstatement in the application or  
4 any other document required to be submitted by the department  
5 or under a provision of this act.

6 (2) Failed to comply with or violated any provision of  
7 this act or any regulation, order or statement of policy  
8 issued by the department under this act.

9 (3) Engaged in unfair or unethical conduct in connection  
10 with the construction or building trade industry or in  
11 violation of 62 Pa.C.S. Ch. 23 (relating to ethics in public  
12 contracting).

13 (4) Does not possess the financial fitness, character,  
14 reputation, integrity and general fitness sufficient to  
15 warrant reasonable belief that the applicant's business will  
16 be conducted lawfully, honestly and in the public interest.

17 (5) Notwithstanding any other provision of law to the  
18 contrary, been convicted of or pleaded guilty or nolo  
19 contendere to a crime of moral turpitude or to an offense  
20 graded as a felony.

21 (6) Been enjoined by a court of competent jurisdiction  
22 from engaging in the construction or building trade industry.

23 (7) Has had a license issued by the department or any  
24 other Federal, state or local agency denied, not renewed,  
25 suspended or revoked.

26 (8) Became the subject of a United States Postal Service  
27 fraud order.

28 (9) Demonstrated negligence or incompetence in  
29 performing an act for which the applicant is required to hold  
30 a license under an act enacted by this Commonwealth.

1 (10) Has an outstanding debt to the Federal Government,  
2 the Commonwealth or any Federal or Commonwealth agency or a  
3 political subdivision of the Commonwealth or agency of a  
4 political subdivision.

5 (11) Became insolvent at any time prior to the  
6 application date, meaning that the liabilities of the  
7 applicant exceeded the assets of the applicant or that the  
8 applicant could not meet the obligations of the applicant as  
9 they matured or was in such financial condition that the  
10 applicant could not continue in business without jeopardizing  
11 the health, safety and welfare of its customers.

12 (12) At any time prior to application, failed to  
13 disburse payments to subcontractors in a timely manner as  
14 agreed to under a contract for any reason other than the  
15 owner's failure to make the agreed-to-payments to the  
16 applicant or because such disbursement would constitute a  
17 violation of applicable law or an order issued by a court or  
18 administrative body of competent jurisdiction.

19 Section 8. Duties of department.

20 (a) Technical assistance.--The department shall provide  
21 technical assistance to enable disadvantaged businesses to  
22 competitively bid on State and other governmental contracts.  
23 Technical assistance shall include, but not be limited to,  
24 assisting disadvantaged businesses in responding to bid  
25 requests, strengthening financial condition and addressing other  
26 concerns raised or likely to be raised by a bonding company.

27 (b) Monitoring program.--

28 (1) The department shall establish a monitoring program  
29 to monitor the activities of disadvantaged businesses  
30 participating in the program. The monitoring program shall

1 include inspections of projects approved for bond guarantees  
2 to minimize the risk of calls on the fund.

3 (2) The department shall promptly advise the  
4 disadvantaged business of any deficiencies identified during  
5 an inspection.

6 (3) In the event the deficiencies noted in the report  
7 are not promptly addressed by the disadvantaged business to  
8 the satisfaction of the department, the department may give  
9 the disadvantaged business a reasonable period to correct the  
10 deficiencies or may report such deficiencies to the issuing  
11 bond company.

12 Section 9. Regulations.

13 The department shall administer and enforce the provisions of  
14 this act and shall adopt and promulgate regulations, guidelines  
15 or policy statements necessary to carry out the provisions of  
16 this act.

17 Section 10. Appropriation.

18 The sum of \$5,000,000, or as much as may be necessary, is  
19 appropriated to the Department of Community and Economic  
20 Development for deposit into the fund for the operation of the  
21 program. The department is authorized to expend up to 10% of the  
22 money so appropriated for administrative costs.

23 Section 11. Publication of notice.

24 The secretary shall, upon the effective date of an act making  
25 an appropriation under section 3 to the department, submit for  
26 publication in the Pennsylvania Bulletin notice of the  
27 appropriation.

28 Section 12. Effective date.

29 This act shall take effect immediately.