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

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

Section 1. Short title. This act shall be known and may be cited as the Surety Bond Guarantee Fund Program Act.

Section 2. Definitions. The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

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

"Disadvantaged business." A small business which is owned or
controlled by a majority of persons, not limited to members of
minority groups, who have been deprived of the opportunity to
develop and maintain a competitive position in the economy
because of social disadvantages.

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

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

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

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

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

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

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

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

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

Section 3. Establishment of program.

The Surety Bond Guarantee Fund Program is established in the
department. The purpose of the program is to assist
disadvantaged businesses to competitively bid for governmental contracts.

Section 4. Surety Bond Guarantee Fund.

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

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

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

Section 5. Contract eligible for guarantee.

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

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

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

3. The bond is executed by a surety company that is acceptable to the Treasury Department and qualified by the department.

4. The bond meets any other requirements established by the department.
(b) Required provision and notice of cancellation.--

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

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

Section 6. Disadvantaged business participation.

(a) Application process.--

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

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

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

(b) Investigation.--

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

(2) If the investigation finds and the department determines that an applicant is not eligible to participate
in the program, it shall notify the applicant in writing that
the applicant will not be approved for program participation.
The notification of ineligibility shall include the reason
the application was not approved and that the applicant has
the right to appeal the department's determination to the
secretary within 30 days of the date of the notice.
(c) Criteria for determining eligibility.--An applicant
shall be deemed eligible to participate in the program if the
department determines that an applicant meets all of the
following criteria:
   (1) The applicant is a disadvantaged business certified
       by the department.
   (2) The applicant's business is in the construction or
       building trade industry.
   (3) The applicant has been actively operating its
       business for at least one year prior to the application date.
   (4) The applicant has the experience and financial
       fitness appropriate of a qualified contractor.
   (5) The applicant has agreed to subcontract no more than
       75% of the work to be performed under a qualified contract.
   (6) The applicant has demonstrated an inability to
       secure bonding under normal market conditions.
   (7) The applicant or one of its owners, officers,
       directors, principals or agents is not subject to section 7.
   (8) The business meets any other program requirements
       that establish criteria for eligibility that the department
       shall adopt by regulation within 180 days of the effective
       date of this section.
Section 7. Criteria for denying program participation.
The department may deny an application for program
participation if it determines that the applicant or one of its owners, officers, directors, principals or agents:

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

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

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

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

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

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

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

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

(9) Demonstrated negligence or incompetence in performing an act for which the applicant is required to hold a license under an act enacted by this Commonwealth.
(10) Has an outstanding debt to the Federal Government, the Commonwealth or any Federal or Commonwealth agency or a political subdivision of the Commonwealth or agency of a political subdivision.

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

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

Section 8. Duties of department.

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

(b) Monitoring program.--

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

20150HB0041PN0035 - 7 -
include inspections of projects approved for bond guarantees to minimize the risk of calls on the fund.

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

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

Section 9. Regulations.

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

Section 10. Appropriation.

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

Section 11. Publication of notice.

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

Section 12. Effective date.

This act shall take effect immediately.