

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1856 Session of  
2011

INTRODUCED BY SIMMONS, K. BOYLE, KILLION, MURT, MUSTIO, PAYTON,  
REED AND WAGNER, SEPTEMBER 22, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, SEPTEMBER 22, 2011

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 in this  
6 act.

7 "Program." The Surety Bond Guarantee Fund Program  
8 established in 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

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 moneys 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."

(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.

1 (b) Required provision; 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 it determines that additional time  
19 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 it will reach its  
22 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  
28 whether the applicant is eligible to participate in the  
29 program.

30 (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 qualifications:

(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 to a qualified contract.

(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 has not committed or been convicted of any of the activities set forth in 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.

1 Section 7. Criteria for denying program participation.

2 The department may not approve or may deny an application for  
3 program participation if it determines that the applicant or one  
4 of its owners, officers, directors, principals or agents  
5 committed or has been convicted of the following:

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

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

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

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

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

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

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

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

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

4           (10) Has an outstanding debt to the Federal Government,  
5 the Commonwealth or any Federal or Commonwealth agency or a  
6 political subdivision of the Commonwealth or agency of a  
7 political subdivision.

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

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

22 Section 8. Duties of department.

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

30       (b) Monitoring program.--

1           (1) The department shall establish a monitoring program  
2           to monitor the activities of disadvantaged businesses  
3           participating in the program. The monitoring program shall  
4           include inspections of projects approved for bond guarantees  
5           to minimize the risk of calls on the fund.

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

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

15 Section 9. Regulations.

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

20 Section 10. Appropriation.

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

26 Section 11. Effective date.

27          This act shall take effect immediately.