



The Surety & Fidelity  
Association of America



The National Association of  
Surety Bond Producers

**Surety Industry Concerns with U.S. Senate Bill (S.223)  
“FAA Air Transportation Modernization and Safety Improvement Act of 2011”**

Section 715 (g) of S. 223, entitled “Prohibition on Excessive or Discriminatory Bonding Requirements,” requires the Federal Aviation Administration (FAA) to establish a program to eliminate barriers to small business participation in airport-related contracts and concessions by prohibiting excessive, unreasonable or discriminatory bonding requirements in FAA projects. The FAA would be given one year from the enactment of its reauthorization legislation to promulgate a final rule to implement this new requirement.

The intent of increasing small business participation in airport-related contracts is laudable and one the surety industry both supports and is working to achieve. S. 223, however, includes assertions that are untrue and proposes what would be duplicative government spending.

***Why language in Subsection (g) is inaccurate and unnecessary:***

- S. 223 asserts a need to eliminate “excessive, unreasonable or discriminatory bonding requirements” through a “program.” There is no evidence of “excessive, unreasonable or discriminatory bonding requirements” for FAA projects. Further, it is unclear how a program could address such requirements, even if they did exist.
- Under the federal Miller Act, Congress requires a payment and performance bond for 100% of the contract price for federal construction projects in excess of \$150,000. In addition, the federal law requires “payment security” for all contracts between \$35,000 and \$150,000. A surety bond is one of the options for providing such payment security. Federal contracting entities require, and the sureties issue bonds, exactly as the Miller Act requires. How can that be excessive or unreasonable bonding? As for “discrimination,” this already is against federal and state law and no additional legislation is necessary to enforce those laws.

- There is sound public policy supporting the universal requirement of surety bonds on public works projects. These bonds guarantee that federal construction projects will be completed and the subcontractors, suppliers and workers on the project will get paid. If the surety backs a contractor that defaults on the project, the full amount of the surety bond is available to complete the work and pay those who performed work on the job. Liens cannot be placed on federal property, so without a bond in place, there would be no other way for subcontractors, suppliers and workers on the job to get paid. Bonding requirements exist to provide vital safeguards for those who work on public projects and the taxpayers who pay for them.
- The word “discrimination,” by dictionary definition, means a distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit.
- Unlike discrimination, surety bonding is based solely on individual merit rather than in favor of a person based on a category or group.
- Before a surety writes a bond, the individual or company must establish that he/she is qualified to perform the obligation being guaranteed by the surety bond.
- Thus, the contractor undergoes a careful, rigorous, and thorough prequalification process so the surety is satisfied that the contractor has the ability to meet current and future obligations, and has the experience and capacity to complete the contract.
- Each surety company has its own criteria for issuing bonds, so applicants have numerous places to go to find a surety that meets its needs.
- The surety industry has a financial incentive to bond as many qualified contractors as possible regardless of the category or group to which a person might belong. Bond producers, who earn commissions only when securing surety credit for clients, look for ways to develop relationships with construction firms so that they are able to qualify for bonds and will grow and move on to larger projects.
- The surety industry supports efforts to expand opportunities for small businesses through existing bond guarantee programs such as that of the U.S. Small Business Administration (SBA) or through educational programs such as that administered by the U.S. Department of Transportation (DOT).

***If there is a problem with small and emerging contractors in obtaining bonds, programs already are in place to address that issue and should be utilized:***

- The U.S. Small Business Administration (SBA) Office of Surety Guarantee was created to ensure that small and emerging contractors have opportunities to bid on public construction work, grow their business and remain a viable part of the US economy.

- Small businesses must have access to surety bonds to obtain federal construction contracts, and the SBA program assists them in obtaining these bonds by issuing bond guarantees to surety companies.
- The National Association of Surety Bond Producers (NASBP) and The Surety & Fidelity Association of America (SFAA) believe the existing SBA Bond Guarantee Program should be utilized and revitalized. NASBP and SFAA are working with the SBA and congressional staff to streamline the program to enhance participation by sureties, bond producers, and contractors.
- The DOT has implemented a Bonding Education Program (BEP) to provide bonding education, placement and technical assistance to small businesses competing for, or awarded transportation-related contracts. This program is based on a Memorandum of Understanding with the SFAA. NASBP members play a vital role in the Program assisting small businesses in assembling documents for bond-readiness assessments and in initiating the steps for prequalification for actual contracting opportunities that require bonding.
- A pilot program for the BEP was undertaken in 2010 in Chicago, Atlanta and Dallas. Currently, construction companies in these locales are engaged in the bond readiness component of the Program.
- Based on the success of the pilot program, the program will expand throughout 2011 to Baltimore, Raleigh, Miami, Orlando, Denver, New Orleans, Los Angeles, Chicago, New York, Seattle, Columbia, SC, and Minneapolis. The Baltimore program already is underway.
- Although it is unclear from S. 223 just what type of program is contemplated, any program addressing surety bonding for small contractors specifically for FAA projects would be duplicative of the bonding education program that the DOT already has in place, or the SBA bond guarantee program. Currently, both of these Federal Government programs are available to FAA contractors. Subsequently, a duplicative program in the FAA wastes resources that otherwise could fund other kinds of assistance for small and emerging contractors.