

SUBJECT: Requirements for issuing surety bonds

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Smithee, Van de Putte, Averitt, Bonnen, Burnam, Eiland, G. Lewis, Olivo, Wise

0 nays

WITNESSES: For — Raymond Risk, American Subcontractors Association; Steve Winn; Clark Wright

Against — None

On — Robert Bass, Texas Coalition of Sureties

BACKGROUND : Contractors must have payment and performance surety bonds for public works projects over \$100,000 from surety companies licensed and regulated by the Texas Department of Insurance (TDI). Surety bonds are not required for private construction, but if written must be from surety companies approved by TDI.

DIGEST: CSHB 3158 would require that surety companies issuing bonds for \$100,000 or more for public works contracts or private construction be licensed and approved by TDI and hold a certificate of authority from the U.S. Department of the Treasury or be reinsured by a surety company authorized by the U.S. Treasury Department.

The bond would have to state on its face that the surety company held a certificate of authority from the U.S. Department of the Treasury, and that a third party could rely on the bond as issued by a company authorized by the U.S. Treasury Department.

Governmental entities would be required to ensure that insurance companies replacing a loss rather than making a direct cash payment provide performance and payment sureties before any contractor could begin work.

CSHB 3158 would take effect September 1, 1997, and would apply to bonds made on or after that date.

**SUPPORTERS
SAY:**

CSHB 3158 would give subcontractors and suppliers on public works a higher degree of certainty that they would be paid because the payment and performance surety bonds would have to be held by federal treasury-approved surety companies. Such surety companies are less likely to default than those approved by the Texas Department of Insurance because they have undergone thorough and expensive examination before being listed, thereby ensuring mechanics and subcontractors that their bonds are good and valid.

The bill also would protect governmental entities in cases where an insurance company or its contractor failed to perform work required by a claim under an insurance policy. Furthermore, the payment bond would protect the subcontractors and assure them of payment even if the insurance company should go insolvent.

**OPPONENTS
SAY:**

Although CSHB 3158 may help assure subcontractors that the surety company issuing a payment and performance surety bond is responsible and solvent, merely having the phrase “treasury listed” on a bond would not ensure its validity. Insurance companies should be required to ascertain whether, in fact, the company is actually on the treasury list. Surety bond forms rarely change, and it could be dangerous to rely on a statement that could no longer be valid. Surety companies go on and off the treasury list all the time, as their fortunes change.

Just because a surety company was reinsured by a “treasury-listed” surety company would not guarantee that it was insured in all cases. Reinsurance agreements are contracts of indemnity between the reinsurance company and the surety company and do not benefit the claimants. Reinsurance is not specific to a particular bond, but to the company, and a reinsurer can cancel an agreement under certain circumstances. If the reinsurance agreement had been terminated, it would be inaccurate and misleading to claim that the surety company was reinsured by a treasury-list surety company.

HB 3158
House Research Organization
page 3

NOTES: The committee substitute made a number of technical changes to the original bill.

The companion, SB 1128 by Madla, has been referred to the Senate Economic Development Committee.