

HOUSE BILL No. 5571

March 3, 1992, Introduced by Reps. Saunders and Joe Young, Jr. and referred to the Committee on State Affairs.

A bill to create the Michigan small business surety bond guaranty program; to create the Michigan small business surety bond guaranty fund; to provide for premiums and fees; to prescribe the powers and duties of certain state officials and agencies; and to prescribe penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "Michigan small business surety bond guaranty program act".

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of commerce.

5 (b) "Fund" means the Michigan small business surety bond
6 guaranty fund created pursuant to section 10.

7 (c) "Minority" means a person who is black, hispanic,
8 oriental, eskimo, or an American Indian who is not less than 1/4

1 quantum Indian blood as certified by the person's tribal
2 association and verified by the Indian affairs commission.

3 (d) "Minority owned business" means a business enterprise of
4 which more than 50% of the voting shares or interest in the busi-
5 ness is owned, controlled, and operated by individuals who are
6 members of a minority and with respect to which more than 50% of
7 the net profit or loss attributable to the business accrues to
8 shareholders who are members of a minority.

9 (e) "Person" means an individual, partnership, association,
10 corporation, governmental entity, or any other legal entity.

11 (f) "Principal" means a small business entity as defined by
12 section 2 of the small business act, Public Law 85-536, 15
13 U.S.C. 632.

14 (g) "Program" means the Michigan small business surety bond
15 guaranty program created in section 3.

16 (h) "Woman owned business" means a business of which more
17 than 50% of the voting shares or interest in the business is
18 owned, controlled, and operated by women and with respect to
19 which more than 50% of the net profit or loss attributable to the
20 business accrues to the women shareholders.

21 Sec. 3. The Michigan small business surety bond guaranty
22 program is created in the department of commerce to guarantee
23 certain bonds for public construction projects of federal, state,
24 or local units of government.

25 Sec. 4. (1) A principal may apply for a bond guarantee
26 under this act by applying to the department on a form prescribed
27 by the department.

1 (2) The application shall contain all of the following:

2 (a) A detailed description of the project for which the bond
3 guarantee is being sought.

4 (b) An itemization of the principals' known and estimated
5 project costs.

6 (c) The total amount of investment required of the principal
7 under the project contract.

8 (d) The funds available to the principal for working
9 capital.

10 (e) The amount of bonding required of the principal under
11 the project contract.

12 (f) The amount sought by the principal to be guaranteed by
13 the guaranty program.

14 (g) Information on the financial status of the principal,
15 including, but not limited to, all of the following:

16 (i) A current balance sheet.

17 (ii) A profit and loss statement for the immediate past
18 fiscal year.

19 (iii) Credit references as required by the department.

20 (h) A schedule and status of all existing and pending
21 project contracts of the principal.

22 (i) All other information as required by the department.

23 Sec. 5. (1) To qualify for participation in the guaranty
24 program, the surety shall meet all of the following
25 requirements:

26 (a) Is licensed to do surety business in this state.

1 (b) Has agreed to participate in the guaranty program and
2 comply with the requirements of this act.

3 (c) Is a company that writes bid, payment, defect, mainte-
4 nance, or performance bonds in its normal course of business.

5 (2) To qualify for participation in the guaranty program,
6 the principal shall meet all of the following requirements:

7 (a) Has demonstrated financial responsibility.

8 (b) Is a resident of this state.

9 (c) Is unable to obtain adequate bonding on reasonable terms
10 and conditions.

11 (d) Is required to obtain bonding in order to bid or perform
12 on the project contract.

13 (e) Has agreed to participate in the guaranty program and
14 comply with the requirements of this act.

15 Sec. 6. (1) Upon application, if the department finds that
16 the surety and principal meet the requirements of section 5 and
17 the principal has paid the premiums and fees required by section
18 8, the department may through the guaranty program guarantee to
19 the surety, up to the limits set in subsection (2), a bond issued
20 to the principal.

21 (2) A guaranty under this act shall be limited to a maximum
22 of 90% or \$100,000.00, whichever is less, of losses that result
23 due to a breach by a principal on a bid, payment, defect, mainte-
24 nance, or performance bond.

25 Sec. 7. A minimum of 20% of the aggregate value of bonds
26 for which guarantees are issued under this act shall be issued on

1 contracts in which the principal is a minority or woman owned
2 business.

3 Sec. 8. A minimum of 15% of the aggregate value of bonds
4 for which guarantees are issued under this act shall be issued on
5 contracts in which the surety is a minority or woman owned
6 business.

7 Sec. 9. (1) The department shall set reasonable premiums
8 and fees to be paid by the principal for participation in the
9 guaranty program.

10 (2) The amount of premiums and fees required by this section
11 shall not exceed 10% of the total project contract to be awarded
12 to the principal.

13 (3) The premiums and fees shall be paid as prescribed by the
14 department.

15 Sec. 10. (1) The Michigan small business surety bond guar-
16 anty fund is created within the state treasury for the purpose of
17 guaranteeing bonds under this act.

18 (2) The fund shall be administered by the department.

19 (3) The state treasurer shall credit to the fund all amounts
20 collected pursuant to section 9 and amounts appropriated from
21 public or private sources consistent with the purposes of the
22 fund.

23 (4) The state treasurer shall direct the investment of the
24 fund, and all interest and earnings from the fund shall be cred-
25 ited to the fund.

1 (5) Money in the fund at the end of the fiscal year shall
2 not revert to the general fund but be carried over in the fund to
3 the next and succeeding fiscal year.

4 Sec. 11. (1) The department shall promulgate rules to
5 implement this act pursuant the administrative procedures act of
6 1969, Act No. 306 of the Public Acts of 1969, being sections
7 24.201 to 24.328 of the Michigan Compiled Laws.

8 (2) The rules shall include at a minimum the strict time
9 periods in which the department must approve or reject applica-
10 tions to the program and for the payment of claims made against
11 the program under this act.

12 Sec. 12. A person who knowingly makes a false statement in
13 an application or other document filed with the department under
14 this act is guilty of a felony, punishable by imprisonment for
15 not more than 5 years, or by a fine of not more than \$10,000.00,
16 or both.