

## **Individual Surety Legislation Does Not Work**

- **Many Small and Emerging Subcontractors Are Left with Far Less Protection**

Mechanics liens cannot be asserted against public property. Most small and emerging contractors start out as subcontractors. These subcontractors, along with laborers and suppliers on public projects, must rely on the general contractor's payment bond for protection. With individual sureties, these parties could be left with no practical means to collect for their services and supplies if the contractor is unable or unwilling to pay them. The only protection the workers and suppliers will have is the ability of the State to seize and liquidate the collateral pledged by the individual surety and use the proceeds to pay the individual surety's obligations. This problem could be exacerbated with state legislation, such as (bill number) which does not even require individual sureties to put the assets pledged in the hands of the State or in a federally insured financial institution.

- **Individual Sureties Place New Burdens on State Contracting Officers**

Use of individual sureties places a tremendous burden on state procurement officers, who focus on the already complex tasks of efficiently procuring and administering the state's construction projects, and who otherwise have been able to rely on the state insurance departments to license and regulate sureties conducting business in the State. If individual sureties are permitted to write surety bonds on state public construction projects, state procurement officers will be required to determine the acceptability of individual sureties and the authenticity of the documentation of the assets pledged to support the individual surety's bond obligations, and to verify that the pledged assets actually exist, are sufficient and are available to the State. Few, if any, state procurement officers have been trained or are prepared to perform these tasks. They will have to know that a particular financial document is what it purports to be and to understand and to assess the different types of collateral, such as stocks and real estate located anywhere in the United States. Most states also do not have the necessary infrastructure, budget and precedents in place to assist state procurement officers with performing these critical tasks.

- **Individual Sureties Might Not Be Subject to Licensing and Financial Regulation**

Any person or entity that provides surety bonds, whether as individuals or as companies, should be licensed and regulated by the state insurance department. The surety industry supports vigorous competition in the industry by players on an equal regulatory playing field. There is no reason that individual sureties should be exempt from the oversight and regulatory control of the state insurance commissioner. The state's interest in regulating and in imposing certain minimum capital requirements and financial reporting requirements on those who conduct surety business in the State is paramount to protect the state's resources, its citizens and the businesses that purchase or are beneficiaries of such surety bonds. The state's interest in regulating such matters does not and should not change simply because one surety is an individual and one is a company.

- **Individual Sureties Do Not Generally Have Claim Handling or Underwriting Prequalification Expertise**

Corporate sureties bring to the table their prequalification expertise to determine if a contractor has the capacity, capital, and character to complete the project. If the individual surety does not have sufficient technical and underwriting experience to determine if a contractor is qualified to complete a project, the contractor may default. The State also must consider the individual surety's claims handling experience and reputation. If the individual surety does not have personnel with experience to handle claims for a project on which the contractor has been terminated, it likely will take much longer to correctly remobilize, and subcontractors' claims will take longer to resolve. The importance of the ability of the individual surety to step in and complete the project by paying the claim or finishing the work can't be discounted when considered in the context of a main bridge in need of immediate repair or a school that needs to be completed before the next school year.

- **Individual Sureties Put Taxpayer Dollars at Risk**

The history of fraud in the use of individual sureties cannot be ignored. The current federal regulations governing individual sureties, which require assets to be placed in a federally insured financial institution, were promulgated due to fraud committed by individual sureties posting surety bonds on federal projects. Similarly, various states currently have cease and desist orders in place against certain individual sureties. There is little, if any, evidence of an individual surety actually posting a surety bond and paying claims on that bond to either payment or performance bond claimants. It doesn't take much imagination to realize that if individual sureties can write bonds in unlimited amounts, they could be the surety on multiple large state contracts. If the assets pledged to support the bonds are uncollectible, and any or all of the bonded contractors defaulted, the public owners would be left to complete the construction projects and pay subcontractors, suppliers and laborers. The additional cost of this falls on the taxpayers.

- **Individual Surety Legislation Does Not Necessarily Help Small and Emerging Contractors**

Permitting individual sureties to issue bonds does not mean that such sureties will focus their efforts on small and emerging contractors. **HB 3065** would authorize individual sureties to issue bonds for any state contracting officer that will accept their bonds—which could be any job and any contractor.