



## **New Jersey SB 1392: How to Find and Select a Surety Company**

### **Summary of the Bill**

SB 1392 would authorize every municipality and county to adopt criteria to determine the eligibility of the surety companies that provide bonds or other guarantees for persons employed, contracting with, or proposing to enter into contracts with the municipality or county. Such criteria could include, but is not limited to, consideration of the surety's rating by a nationally recognized rating organization, the surety's past performance in meeting its obligations, and any other relevant financial information.

Public entities in New Jersey understandably want a bond only from a responsible and financially sound surety. There are, however, much more cost-effective and objective ways to determine the acceptability of sureties than permitting each municipality and county to develop its own standards.

### **The Existing Sources of Information About Surety Companies**

The New Jersey insurance department licenses and regulates any insurer that writes surety bonds in the State. In order to obtain a license, a surety must meet the capital and surplus requirements of the state. If the surety is already licensed elsewhere, the surety must meet the same capital and surplus requirements and be in good standing with its state of domicile. New Jersey uses the Uniform Company Admissions Application, which all other states now use. New Jersey and other states have agreed to a common set of information, records, and data that companies must submit to any state in order to obtain a license. If licensed, a surety will file a comprehensive annual financial report and will be subject to financial and market conduct exams, among many other requirements in the insurance code, such as unfair claims settlement practices, investment limitations and regulation of the rates charged for bonds. The New Jersey Insurance Department should be the first source of information about sureties for municipalities and counties.

The National Association of Insurance Commissioners (NAIC) has made basic financial and consumer information about all licensed insurers in the United States available on the Consumer Information Source on its website at [www.naic.org](http://www.naic.org).

All sureties that write bonds for the federal government must have a certificate of authority from the U.S. Department of Treasury, which also conducts a thorough financial review of sureties and sets a single bond size limit. The Treasury maintains a list of sureties qualified to write bonds for the federal government at <http://fms.treas.gov/c570>.

There also are various national rating organizations that measure and report the financial strength of insurers. This would be another source of information to the municipalities and counties.

### **SB 1392 Creates a Dual and Possibly Conflicting Scheme of Regulation for Sureties**

If a surety is licensed in New Jersey and subject to state insurance regulation, any county or municipality should be willing to accept bonds from it. If the counties and municipalities believe they need extra protection, they might also require the surety be listed on the U.S. Treasury list. Beyond this, it is questionable what is gained by having each municipality and county in this State duplicate the financial analysis that the New Jersey Insurance Department and the US Treasury already perform and which is relied on by all other state and federal agencies. Would all of the local governments even have this expertise?

The result could be a myriad of conflicting standards for sureties among the individual counties and municipalities of the State. Under this bill, for example, one county may find a surety to be ineligible, when the state has licensed it to do business anywhere in the State, while another county could find the same surety to be acceptable. To the extent that sureties have to make filings or otherwise submit to a qualification process or pay eligibility fees for each municipality or county, these extra administrative costs would only increase the cost of bonds to and the administrative burdens on local governments.

There is already a single state agency in New Jersey with the authority and expertise to evaluate sureties. The Insurance Department has successfully performed this function for decades and there is no reason to allow each municipality and county to duplicate the Insurance Department's functions and evaluations. If local governments experience problems with sureties licensed in the State, they should report these problems to the Insurance Department for an investigation of the surety, the results of which will benefit all other local governments as well.