

SUBJECT: Bonds executed by sureties

COMMITTEE: Insurance — favorable, without amendment

VOTE: 7 ayes — Smithee, Averitt, Counts, De La Garza, Driver, G. Lewis, Shields
0 nays
2 absent — Duncan, Dutton

SENATE VOTE: On final passage, May 4 — voice vote

WITNESSES: None

BACKGROUND: Public construction projects and many private construction projects require a contractor to provide a performance bond and a payment bond. A performance bond is a contract bond that protects the owner against loss due to the inability or refusal of a contractor to perform the contract. A payment bond ensures that the contractor will pay subcontractors for labor and materials. Both performance and payment bonds are executed by surety companies.

Reinsurance is a common practice among surety companies when they execute bonds. Reinsurance is a contract that one surety company makes with another to protect the latter from a risk already assumed.

Surety companies that hold certificates of authority from the U.S. treasury secretary to qualify them as a surety on obligations permitted under federal law are known as Treasury-listed or "T-listed" surety companies.

DIGEST: SB 1026 would require that performance and payment bonds in amounts that exceed \$100,000 — when required on public and private construction projects — be executed by surety companies that not only have a license from the state but also are Treasury listed. The bond would state that the surety company executing the bond is T-listed so that a third party could conclusively rely on the statement and the record of the bond.

Surety companies that were not T-listed could still execute bonds in amounts that exceed \$100,000 if the bonds that they executed were reinsured by surety companies that were T-listed.

SB 1026 would redefine "public work contract" to include contracts for constructing, altering or repairing a public building or carrying out or completing any public work in which an insurance company is fulfilling its obligation under a contract of insurance by arranging for the replacement of a loss rather than making a cash payment directly to a governmental entity. The term "public work contract" would not include a contract with a surety company complying with an obligation under a bond.

SB 1026 would prohibit a surety company from discriminating on the basis of race, color, religion, national origin or sex in the setting of rates or the issuance of a bond, undertaking, obligation or guarantee.

**SUPPORTERS
SAY:**

In recent years some surety companies in Texas that issued bonds that guaranteed performance by the original contractor to the owner or that guaranteed payment by the original contractor to the subcontractors have failed or fallen into receivership. The result has been that some buildings were not completed and some subcontractors were not paid for their work.

SB 1026 would help to resolve this problem by ensuring the integrity of construction performance and payment bonds that exceed \$100,000 by requiring that surety companies that issue such bonds hold certificates of authority from the U.S. secretary of treasury to qualify as a surety on obligations permitted or required under federal law.

In the past 25 years no T-listed surety company has failed while it was T-listed. T-listed surety companies have a proven record of financial stability that would provide a higher level of assurance to the owners and subcontractors who do business with them.

SB 1026 would redefine public work contract so that contracts carried out by insurance companies with a public entity would be covered by the provisions of this bill.

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SB 1026 would also ensure that surety companies could not engage in discriminatory practices.

OPPONENTS
SAY:

No apparent opposition.