



SB 372

**Civil Action - Surety Insurance - Failure to Act in Good Faith
Education, Health, and Environmental Affairs Committee**

Position: Favorable

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC supports SB 372 and respectfully urges the bill be given a favorable report.

This bill adds obligee claims under surety insurance policies to statutory provisions authorizing the recovery of actual damages, expenses, litigation costs, and interest in first-party claims against insurers if the insurer failed to act in good faith under certain circumstances. The bill also expands the application of provisions regarding unfair claim settlement practices to surety insurance and obligee claims. With the sponsor's amendments, the bill addresses a surety's obligation to act in good faith with respect to performance bonds or performance under a surety insurance policy where the principal has become insolvent, has filed a petition for relief under the bankruptcy laws, has had an involuntary petition filed against it, or has made a general assignment for the benefit of its creditors.

State Finance and Procurement Article, §17-103 requires successful bidders on State construction projects to provide payment and performance bonds. Moreover, §13-225 provides that retainage is limited to 5% if a contractor has provided 100% payment and performance bonds covering the project, so that it is common practice to provide such bonds. While not required in the private sector as a matter of statute, many owners require payment and performance bonds, and general contractors require the same of subcontractors on many projects.

The bottom line is that such bonds are commonplace in the construction industry. As a consequence, unfair claim practices or failures to act in good faith by sureties can affect many construction projects. In the most common case, a general contractor is the obligee under a subcontractor's payment or performance bond, and the subcontractor fails to perform as required by contract or, in the worst case, simply walks off the job or goes out of business. The general contractor as the obligee files a claim with the surety and expects prompt action. Failure of a subcontractor has significant ripple effects on the entire project, since the critical path and schedule have many interdependencies – if subcontractor A fails to perform, other subcontractors dependent on subcontractor A's performance are thrown off their schedules, etc. Prompt attention and steady action by the surety are essential and a reasonable expectation of the contractor-obligee under a performance surety bond. Unfortunately, that is not always the case.

SB 372 simply extends non-controversial provisions in current law governing the performance of insurers under regular insurance policies to sureties and surety bonding, limited to performance bonds and a specific set of failures to perform. These requirements under regular insurance policies are of long-standing and are well understood by insurers and the courts. Good faith and fair surety claim settlement practices are a rational and reasonable expectation of obligees and principals under surety performance bonds. Delays in processing – or even acknowledging – claims and evasive or misleading handling of claims put general contractor-obligees at risk under the prime contract of failing to meet their own contract obligations. This behavior by a surety is unacceptable and should be subject to the good faith and fair claims settlement requirements applicable to other forms of insurance.

Accordingly, Maryland AGC respectfully urges the Committee to give SB 372 with the sponsor's amendments a favorable report.

Champe C. McCulloch
McCulloch Government Relations, Inc.
Lobbyist for Maryland AGC.