

1 IN THE HOUSE

BY GRUENING

2 CS HOUSE BILL NO. 827
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Small Business Surety Guaranty
7 Corporation of Alaska."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 44 is amended by adding a new chapter to read:

10 PART 4. INDEPENDENT STATE BOARDS, ASSOCIATIONS,
11 COMMISSIONS, AND CORPORATIONS.

12 CHAPTER 55. SMALL BUSINESS SURETY GUARANTY

13 CORPORATION OF ALASKA.

14 ARTICLE 1. CREATION AND ORGANIZATION.

15 Sec. 44.55.010. PURPOSE. The purpose of this chapter is to create
16 a further instrumentality of the state to develop, stimulate, and ad-
17 vance the business prosperity and economic welfare of Alaska and its
18 citizens and to relieve seasonal unemployment problems in Alaska by
19 assisting small businesses in the procurement of bid bonds, payment
20 bonds, and performance bonds for purposes of obtaining and performing
21 construction contracts, by means of guaranties of these bonds for local
22 small businesses, and by acting as surety for these bonds, to the extent
23 considered necessary and reasonable by the Small Business Surety
24 Guaranty Corporation of Alaska under its authority.

25 Sec. 44.55.015. POLICY. It is the policy of the Small Business
26 Surety Guaranty Corporation to provide surety and guaranty of surety in
27 accordance with the provisions of this chapter. Before acting as guar-
28 antor for surety, the corporation shall be satisfied that the applicant
29 has endeavored unsuccessfully to obtain guaranty of surety from private

1 sources and from the Small Business Administration. Before acting as
2 surety for a bond, the corporation shall be satisfied that the applicant
3 has endeavored unsuccessfully to obtain surety from private sources.

4 Sec. 44.55.020. SMALL BUSINESS SURETY GUARANTY CORPORATION OF
5 ALASKA. The Small Business Surety Guaranty Corporation of Alaska is a
6 public corporation. The corporation is an instrumentality of the state
7 within the Department of Commerce and Economic Development, but has a
8 legal existence independent of and separate from the state.

9 Sec. 44.55.030. GOVERNING BODY. The corporation's board of
10 directors shall conduct the business of the corporation.

11 Sec. 44.55.040. APPOINTMENT AND COMPOSITION OF BOARD. The board
12 consists of six residents of the state none of whom may be public
13 employees or officials, and the commissioner of commerce and economic
14 development. Public members of the board are appointed by the governor
15 and serve at his pleasure. Appointments to the board shall be made
16 without regard to political affiliation and shall represent the state's
17 geographic and economic interests.

18 Sec. 44.55.050. CONFLICT OF INTERESTS. Upon appointment and
19 during his term of office, a board member shall declare privately in
20 writing to the governor and the board any financial or business interest
21 he has which might conflict with the public nature of his membership on
22 the board. If there is a serious conflict, the board may ask him to
23 abstain from decisions resulting in a conflict or to resign from the
24 board.

25 Sec. 44.55.060. COMPENSATION AND EXPENSES. Public members of the
26 board receive no salary, but are entitled to per diem and travel expen-
27 ses authorized by law for other boards.

28 Sec. 44.55.070. LEGAL ADVISER. The attorney general is the legal
29 counsel for the corporation. He shall advise the corporation in legal

1 matters and represent it in litigation.

2 Sec. 44.55.080. BOARD MEETINGS. The provisions of AS 09.25.110 -
3 09.25.120 (public records) and AS 44.62.310 - 44.62.312 (agency public
4 meetings) apply to the corporation.

5 Sec. 44.55.090. QUORUM AND NOTICE OF MEETINGS. Four members, who
6 may include the commissioner of commerce and economic development, con-
7 stitute a quorum for the transaction of business unless the bylaws
8 require a larger number. Notice of meetings of the board must be given
9 to each member.

10 Sec. 44.55.100. MINUTES OF MEETINGS. The board shall keep minutes
11 of each meeting.

12 Sec. 44.55.110. EXECUTIVE SECRETARY. The board may employ an
13 executive secretary to manage the corporation. The executive secretary
14 shall be professionally trained and experienced in the performance of
15 his duties. The executive secretary may not have any financial or
16 business interest that might conflict with the management of the corpora-
17 tion in the best public interest. The board may delegate its powers and
18 duties to the executive secretary.

19 Sec. 44.55.120. EMPLOYEES' BONDS. The corporation shall bond its
20 principal employees. The amount of a bond shall be determined by the
21 board.

22 ARTICLE 2. POWERS.

23 Sec. 44.55.130. POWERS. (a) In carrying out its corporate pur-
24 poses stated in sec. 10 of this chapter, the corporation may

- 25 (1) exist continuously as a corporation;
26 (2) adopt a seal;
27 (3) adopt bylaws and regulations governing the business of
28 the corporation;
29 (4) sue and be sued;

1 (5) appoint officers, employees, trustees for certificate
2 holders, and agents, and prescribe their powers and duties;

3 (6) make contracts and execute instruments necessary or con-
4 venient in the exercise of its corporate powers;

5 (7) acquire by purchase, lease, bequest, devise, gift, the
6 satisfaction of debts, or the foreclosure of mortgages, and hold, main-
7 tain, use, operate, and convey real or personal property;

8 (8) accept grants or loans from and contract with the federal
9 government, the state, or its political subdivisions, and to that end
10 comply with the provisions of federal, state, or local programs when
11 necessary;

12 (9) lease, alienate, and dispose of property;

13 (10) do what is necessary to carry out the powers granted by
14 this chapter or other laws of the state;

15 (11) purchase any and all insurance from whatever source for
16 the purposes set out in this chapter.

17 (b) The corporation may, by proper action of its board of
18 directors and upon such terms and conditions as it may prescribe,
19 guaranty and enter into commitments to guaranty any surety against loss,
20 as the result of a breach of the terms of a bid bond, payment bond, or
21 performance bond by a principal on any contract up to \$1,000,000 in
22 amount, subject to the following conditions:

23 (1) the person who would be the principal of the bond is a
24 small business concern;

25 (2) the bond is required in order for the person to bid on a
26 contract, or to serve as a prime contractor or subcontractor;

27 (3) the person is not able to obtain the bond on reasonable
28 terms and conditions without a guaranty and has not been able to obtain
29 the guaranty of the Small Business Administration under 15 U.S.C. sec.

1 694;

2 (4) the corporation determines that there is a reasonable
3 expectation that the person will perform the covenants and conditions
4 of the contract with respect to which the bond is required;

5 (5) the contract meets requirements established by the cor-
6 poration for feasibility of successful completion and reasonableness of
7 cost;

8 (6) the terms and conditions of any bond guaranteed under the
9 authority of this section are reasonable in light of the risks involved
10 and the extent of the surety's participation.

11 (c) A contract of guaranty under (b) of this section may not
12 obligate the corporation to pay more than 90 per cent of the loss in-
13 curred by the surety in fulfilling the terms of his contract as the
14 result of the breach by the principal of the terms of a bid bond, perfor-
15 mance bond, or payment bond.

16 (d) The corporation may, by proper action of its board of
17 directors and upon such terms and conditions as it may prescribe, provide
18 surety bond and enter into commitments to act as surety against loss as
19 a result of a breach of the terms of a bid bond, payment bond, or perfor-
20 mance bond by a principal on any contract up to \$1,000,000 in amount,
21 subject to the following conditions:

22 (1) the person who would be the principal of the bond is a
23 small business concern;

24 (2) the bond is required in order for the person to bid on a
25 contract, or to serve as a prime contractor or subcontractor;

26 (3) the person is not able to obtain the bond on reasonable
27 terms and conditions from any other source;

28 (4) the corporation determines that there is a reasonable
29 expectation that the person will perform the covenants and conditions of

1 the contract with respect to which the bond is required;

2 (5) the contract meets requirements established by the cor-
3 poration for feasibility of successful completion and reasonableness of
4 cost.

5 (e) The corporation shall administer this program on a prudent and
6 economically justifiable basis and shall fix a uniform annual fee which
7 it considers reasonable or necessary for any guaranty or surety issued
8 under this section, to be payable at the time and under the conditions
9 as may be determined by the corporation. The fee shall be subject to
10 periodic review in order that the lowest fee that experience under the
11 program shows to be justified will be placed into effect. The corpora-
12 tion shall also fix the uniform fees for the processing of applications
13 for guaranty or for surety bonds under this section as it determines are
14 reasonable and necessary to pay administrative expenses incurred in
15 connection with the processing. Any contract of guaranty or surety
16 under this section shall obligate (1) in the case of application for
17 guaranty, the surety to pay the corporation the portions of the bond
18 fee as the corporation determines to be reasonable in the light of the
19 relative risks and costs involved; (2) in the case of application for
20 surety bond, the principal to pay the corporation that fee as the corpor-
21 ation determines to be reasonable in the light of the relative risks and
22 costs involved. The corporation shall conduct a study of the program in
23 order to determine what must be done to make the program economically
24 sound. Before December 1 of each year, the board shall submit to the
25 governor and the legislature a comprehensive report describing the
26 operations, fiscal transactions, financial condition, and future plans
27 of the board. The governor may prescribe the form of the report.

28 Sec. 44.55.135. CREDIT OF STATE NOT PLEDGED. The corporation may
29 not pledge the credit or the taxing power of the state or its political

1 subdivisions. The state and its political subdivisions are not liable
2 for the debts of the corporation.

3 Sec. 44.55.140. ANNUAL AUDITS. The board shall have its financial
4 records audited annually. The legislative auditor shall conduct the
5 annual audit. If an audit conducted by a certified public accountant is
6 satisfactory in the judgment of the legislative auditor, it may pre-
7 scribe the form and content of the financial records of the board and
8 may have access to these records at any time.

9 ARTICLE 3. GENERAL PROVISIONS.

10 Sec. 44.55.150. SMALL BUSINESS SURETY GUARANTY REVOLVING FUND.
11 There is established a small business surety guaranty revolving fund
12 which shall be administered by the board of directors exclusively for
13 the purposes of this chapter. The fund is composed of money appropri-
14 ated by the legislature to the corporation for the purposes of this
15 chapter. Expenditures may be made from this fund for the administration
16 of this chapter as well as for the guaranties and sureties authorized by
17 the provisions of this chapter. The corporation may pledge any money in
18 this fund for the purposes authorized by this chapter.

19 Sec. 44.55.160. REPAYMENT TO GENERAL FUND. All money made avail-
20 able to the small business surety guaranty revolving fund from the
21 general fund of the state is a loan from the general fund. All surplus
22 at the end of a fiscal year over amounts made available to the fund from
23 the general fund of the state shall be repaid to the general fund in re-
24 duction of the amount owing. Repayments may be made on a lag basis in
25 order to accommodate cash flow needs.

26 Sec. 44.55.170. INVESTMENTS BY ASSOCIATION. The corporation shall
27 place money held in reserve funds or in the small business surety
28 guaranty revolving fund in banks or trust companies having their princi-
29 pal places of business in the United States; or in obligations of the

1 United States or its agencies; or the state or its political subdivi-
2 sions, if the obligations are secured by the general taxing power of the
3 obligor.

4 Sec. 44.55.180. TAX EXEMPTION. Because the purpose of the corpora-
5 tion, as an instrumentality of the state, is to benefit the people of
6 Alaska by increasing their commerce, prosperity, and general well-being,
7 the corporation is exempt from all taxes and assessments in the state.

8 Sec. 44.55.190. GENERAL LIMITATIONS. (a) In making guaranty of
9 bonds or providing surety bond the board shall consider the proposed
10 contract, the purpose of the bond, the integrity and management ability
11 of the applicant, and the applicant's past and prospective performance.

12 (b) The board may make only guaranties or provide surety bonds
13 that are economically sound. No guaranty may be made nor surety bond
14 given unless the applicant has made application for guaranty satisfac-
15 tory to the corporation, from the Small Business Administration, or in
16 the case of surety bond, made application for surety bond satisfactory
17 to the corporation, from such private sources as are available.

18 Sec. 44.55.200. DISSOLUTION. After payment in full of its obliga-
19 tions or after depositing in a trust sufficient money to secure the
20 payment of its obligations, the board may dissolve the corporation by
21 the majority vote of its directors. Dissolution is not effective until
22 the legislature confirms it. The effective date of dissolution is the
23 date the legislature confirms the dissolution or a date determined by
24 the legislature at the time of confirmation. Assets remaining after
25 satisfaction of liabilities and obligations of the corporation shall be
26 deposited to the credit of the state general fund.

27 Sec. 44.55.210. REGULATIONS. The board may adopt regulations or
28 bylaws to implement the purposes of this chapter.

29 Sec. 44.55.220. ANNUAL BUDGET. The corporation shall prepare and

1 submit an annual budget in accordance with the provisions of the
2 Executive Budget Act (AS 37.07).

3 Sec. 44.55.230. BOARD MAY EMPLOY PERSONNEL. The board may employ
4 its executive secretary and special counsel and engage professional and
5 technical services and advice on an independent contract basis. The
6 board shall prescribe the duties and compensation of personnel.

7 Sec. 44.55.240. OTHER EMPLOYEES. Employees of the corporation
8 other than those described in sec. 230 of this chapter are in the
9 classified service under AS 39.25.

10 Sec. 44.55.250. DEFINITIONS. For the purposes of this chapter

11 (1) "bid bond" means a bond conditioned upon the bidder on a
12 contract entering into the contract, if he receives the contract award,
13 and furnishing the prescribed payment bond and performance bond;

14 (2) "corporation" means the Small Business Surety Guaranty
15 Corporation of Alaska;

16 (3) "obligee" means

17 (A) in the case of a bid bond, the person requesting
18 bids for the performance of a contract; or

19 (B) in the case of a payment bond or performance bond,
20 the person who has contracted with a principal for the completion
21 of the contract and to whom the obligation of the surety runs in
22 the event of a breach by the principal of the conditions of a
23 payment bond or performance bond;

24 (4) "payment bond" means a bond conditioned upon the payment
25 by the principal of money to persons under contract with him;

26 (5) "performance bond" means a bond conditioned upon the
27 completion by the principal of a contract in accordance with its terms;

28 (6) "prime contractor" means the person with whom the obligee
29 has contracted to perform the contract;

1 (7) "principal" means (A) in the case of a bid bond, a person
2 bidding for the award of a contract, or (B) the person primarily liable
3 to complete a contract for the obligee, or to make payments to other
4 persons in respect of that contract, and for whose performance of his
5 obligation the surety is bound under the terms of a payment or perfor-
6 mance bond; a principal may be a prime contractor or a subcontractor;

7 (8) "small business concern" means one which is independently
8 owned and operated and which is not dominant in its field of operation;
9 the corporation, in making further definition, may use the criteria of
10 number of employees and dollar volume of business; when the criteria of
11 number of employees is used, the corporation shall consider that numbers
12 of employees in a small business concern vary from industry to industry;

13 (9) "subcontractor" means a person who has contracted with a
14 prime contractor or with another subcontractor to perform a contract;

15 (10) "surety" means the person or corporation who

16 (A) under the terms of a bid bond, undertakes to pay a
17 sum of money to the obligee in the event the principal breaches the
18 conditions of the bond;

19 (B) under the terms of a performance bond, undertakes to
20 incur the cost of fulfilling the terms of a contract in the event
21 the principal breaches the conditions of the contract; or

22 (C) under the terms of a payment bond, undertakes to
23 make payment to all persons supplying labor and material in the
24 prosecution of the work provided for in the contract if the princi-
25 pal fails to make prompt payment.