FISCAL IMPACT OF PROPOSED LEGISLATION **Measure: HB 2870 - A2**

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

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Date:	May 5, 2023

Measure Description:

Requires contracting agency to accept from contractors bonds in lieu of retainage for construction projects and public improvement contracts.

Government Unit(s) Affected:

Construction Contractors Board, Department of Administrative Services, Oregon Youth Authority, Department of Transportation, Parks and Recreation Department, Department of Justice, Statewide, Special Districts Association of Oregon, Counties, Cities, School Districts, Higher Education Coordinating Commission

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

HB 2870 - A3 permits a contractor to submit a surety bond, executed by a surety bonding company, in lieu of retainage required under a public contract. When this happens, the contractor must accept surety bonds from subcontractors or suppliers from which the contractor has withheld retainage. At any time before final payment on a public improvement contract, a subcontractor may request the contractor submit a surety bond to the contracting agency for the portion of the contractor's retainage that pertains to the subcontractor. If this is done, the contractor may withhold from payments to the subcontractor an amount equivalent to the portion of the surety bond premium for which the subcontractor is responsible.

If a contractor or a subcontractor performing work on a large commercial structure or under a public improvement contract does not deposit a surety bond in lieu of retainage, the contractor may elect to have the project owner or contracting agency deposit accumulated retainage in an interest-bearing account with a bank or other financial institution, or pay interest on the accumulated retainage at the rate of two percent plus the discount rate on 90-day commercial paper that is in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that the retainage is paid. The measure is largely operative on January 1, 2024; and declares an emergency and takes effect on passage.

There is an indeterminate impact for implementation of this measure, though potential costs are anticipated to be absorbable at this time by state agencies that undertake contracting activities. However, fiscal impacts will vary based on the costs of the projects being done, project timelines, complications involved, number of contractors electing to make use of a surety bond, and other factors, such as potential legal costs.

Potential cost drivers include payment of interest on retainage, as contractors may elect to have a project owner or contracting agency pay interest on accumulated retainage instead of depositing retainage in an interest-bearing account. It is likely that the costs of these interest payments will be at least partially offset by interest earned by agencies on retainage deposits. There are also potential additional administrative costs for agencies to negotiate with bonding companies, which is noted to be more complicated and time-intensive than negotiations involving retainage. This will add to the administrative overhead costs of projects, and may increase legal expenses or require additional financial staff to track the interest rate spread.