

HB 4006 STAFF MEASURE SUMMARY
House Committee on Business and Labor

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Meeting Dates: 2/5

WHAT THE MEASURE DOES: The measure lets agencies accept surety bonds in lieu of retainage for large commercial or public improvement contracts. It applies the same to subcontractors and suppliers of larger firms.

Detailed Summary: Requires contracting agency accept surety bonds from a contractor in lieu of retainage for large commercial project or public improvement contracts. Specifies requirements for submitting surety bonds. Provides contracting agency ability to reject surety bond, only after agency finds in writing good cause for rejection. Requires contractor on large commercial structure or public improvement contract to accept surety bond from subcontractors or suppliers from which contractor has withheld retainage if contracting agency or owner has accepted a surety bond in lieu of retainage from contractor. Permits contractor on large commercial project or public improvement contract, upon request of subcontractor, to submit surety bond for portion of contractor's retainage that pertains to subcontractor. Specifies relationship between contractor and subcontractor when contractor submits surety bond on subcontractor's behalf. Permits contractor, when contractor or subcontractor are performing work on large commercial project or under public improvement contract and have not deposited surety bond in lieu of retainage, to elect to have project owner or contracting agency deposit accumulated retainage in interest-bearing account with a bank or other financial institution or pay interest on accumulated retainage at rate of two percent plus discount rate on 90-day commercial paper that is in effect at Federal Reserve Bank in Federal Reserve district that includes Oregon on date retainage is paid. Modifies surety bond form language. Repeals requirement that public or private contracting party is required to place retainage in interest-bearing escrow account when contract price exceeds \$500,000. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT: The -2 amendment makes clear that additional costs incurred by the contractor incurs after submitting a bid. It clarifies the applicability of surety bonds of contractors and subcontractors.

BACKGROUND: Retainage is a portion of the agreed upon contract price deliberately withheld until the work is substantially complete to ensure a contractor will satisfy its obligations under a construction contract. With respect to public contracting, a contracting agency may reserve as retainage from a progress payment an amount no greater than five percent of the payment. Upon a written request by the contractor and approval by the contractor's surety, the contracting agency may choose to reduce the amount retained, and after 50 percent of the work is completed, the agency may choose to eliminate the retainage. Once 97.5 percent of the work is complete, the contracting agency may use its discretion to reduce the retained amount to 100 percent of the

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value of the work yet to be completed. Retainage held by the contracting agency must be paid to the contractor as part of the final payment and interest earned on money retained is due to the contractor. Five percent retainage is allowed on private projects. Currently, a public or private contracting party is required to place retainage in an interest-bearing escrow account when the contract price exceeds \$500,000.

House Bill 4006 requires a contracting agency accept surety bonds from a contractor in lieu of retainage for large commercial project or public improvement contract. The measure requires a contractor on a large commercial project or public improvement contract to accept a surety bond from subcontractors or suppliers from which contractor has withheld retainage if contracting agency or owner has accepted a surety bond in lieu of retainage from contractor. The measure permits a contractor on a large commercial project or public improvement contract, upon request of subcontractor, to submit a surety bond for the portion of contractor's retainage that pertains to subcontractor.

PRELIMINARY