

HB 4006 A STAFF MEASURE SUMMARY

Carrier: Rep. Boshart Davis

House Committee On Business and Labor**Action Date:** 02/07/24**Action:** Do pass with amendments. (Printed A-Eng.)**Vote:** 11-0-0-0**Yeas:** 11 - Boshart Davis, Breese-Iverson, Elmer, Grayber, Holvey, Hudson, Nelson, Nosse, Osborne, Scharf, Sosa**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Patrick Brennan, LPRO Analyst**Meeting Dates:** 2/5, 2/7**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 agencies to accept surety bonds from a contractor in lieu of retainage for large commercial project or public improvement contracts. Specifies the requirements for submitting surety bonds. Provides contracting agencies the ability to reject a surety bond after agency finds good cause for rejection in writing. Requires contractors on large commercial structure or public improvement contracts to accept a surety bond from subcontractors or suppliers from which the contractor has withheld retainage if the contracting agency or owner has accepted a surety bond in lieu of retainage from the contractor. Permits contractors on large commercial projects or public improvement contracts, upon the request of a subcontractor, to submit a surety bond for the portion of the contractor's retainage that pertains to subcontractor. Specifies the relationship between contractors and subcontractors when a contractor submits surety bond on subcontractor's behalf. Permits a 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 the project owner or contracting agency deposit the accumulated retainage in an interest-bearing account with a bank or other financial institution or to pay interest on accumulated retainage at rate of two percent plus the discount rate on 90-day commercial paper that is in effect at Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date the retainage is paid. Modifies the language of the surety bond form. Repeals the requirement that a public or private contracting party is required to place retainage in an interest-bearing escrow account when the contract price exceeds \$500,000. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Previous legislative efforts to address retainage
- Technical amendment

EFFECT OF AMENDMENT:

Clarifies that additional costs the contractor incurs after submitting a bid are to be borne by the contractor. 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

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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 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 A requires contracting agencies to accept surety bonds from contractors in lieu of retainage for large commercial projects or public improvement contracts. 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 also 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 subcontractors.