

Written Testimony in Support of HB 4006

February 5, 2024

To the members of the Oregon House Committee on Business and Labor:

We write to express our support for House Bill 4006 and to supplement testimony that has been submitted by others.

The concept of surety bonds in lieu of cash retainage is not new. Current Oregon law provides that contractors have the right to submit, and that public contracting agencies have the obligation to accept, bonds in lieu of cash retainage on public works construction projects. However, as the result of internally conflicting language, the current statute is often misinterpreted by contracting agencies as giving them broad discretion whether to accept or reject bonds in lieu of cash retainage.

This bill, among other things, effectuates the original drafters' intent by eliminating confusion and limiting agency discretion to reject a contractor's bond in lieu of cash retainage. The bill still provides that an agency may elect not to accept such a bond, but "only if the agency first finds in writing good cause for the rejection that is based on unique project circumstances."

In other words, agencies may not reject bonds because they would rather hold the cash, or because they don't like a particular contractor, or because they object in principle to the bond-in-lieu concept – all of which have been used as rationales for rejection of such bonds in the past, and all of which are impermissible.

In short, with the passage of this bill, an agency's rejection of a contractor's bond in lieu of cash retainage should be rare, should be based on specific project-based written findings, and should be difficult to accomplish.

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