



National Association of Surety Bond Producers

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Delivered to: jeff.morris@leg.wa.gov; gael.tarleton@leg.wa.gov; shelley.kloba@leg.wa.gov

Representative Jeff Morris
Chair, House Technology &
Economic Development
Committee
436A Legislative Building
Olympia, WA 98504-0600

Representative Gael Tarleton
Vice Chair, House Technology
& Economic Development
Committee
429A Legislative Building
Olympia, WA 98504-0600

Representative Shelley Kloba
Vice Chair, House Technology
& Economic Development
Committee
132A Legislative Building
Olympia, WA 98504-0600

RE: Concerns with HB 1897, legislation to increase surety bond threshold requirements

Dear Chair Morris and Vice Chairs Tarleton and Kloba;

On behalf of the members of the National Association of Surety Bond Producers (NASBP), a national trade organization of professional surety bond producers, whose membership includes resident and non-resident firms employing licensed surety bond producers placing bid, performance, and payment bonds throughout the U.S., including Washington, I am contacting you regarding our strong opposition to House Bill 1897, which increases the statutory bond threshold on contracts awarded through the state's "limited public works process" from \$35,000 to \$150,000. Such an increase would mean that many more taxpayer funded construction contracts would be procured without the vital assurance of performance and payment guarantees.

The Washington legislature recognized the important, protective role surety bonds play on public works contracts by enacting the Revised Codes of Washington, Title 39, Public Contracts and Indebtedness, specifically Section 39.08.010. Such statutory requirements ensure that only pre-qualified construction firms receive award of public contracts and those subcontractors and suppliers on those contracts have vital payment remedies in place in the event of non-payment.

NASBP is concerned that HB 1897 would have a negative impact on small businesses that supply labor and materials on Washington public construction projects as well as the taxpayers of Washington. Small businesses often cannot compete as prime contractors on public construction contracts, so they participate at subcontractor and supplier levels. At that level, these businesses' only viable remedy in the event of nonpayment by the prime contractor is to claim on the statutorily-required payment bond. If the prime contractor fails to pay subcontractors and suppliers due to bankruptcy, or for other reasons, such subcontractors and suppliers would not have an alternative means to recover their wages, costs, and expenses. They cannot sue the governmental entity, because they do not have a direct contract with the governmental entity, and they cannot place a mechanic's lien against public property.

Furthermore, taxpayer dollars are at risk when state projects are awarded without the protection of performance bond guarantees. In the absence of a performance bond, additional taxpayer funds will be required to complete projects where prime contractors default in their performance

of public construction contracts. By increasing the threshold for a surety bond, contracting agencies also will have to shoulder a higher burden of screening and pre-qualifying more contractors, diverting their resources and energies away from other important tasks.

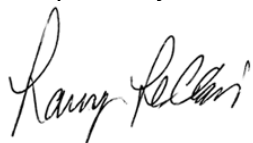
The State of Washington should not be seeking to deprive Washington businesses and taxpayers of protections in this volatile economic environment. If the impetus behind the bill is greater inclusion of small and minority businesses as prime contractors on state and local contracts, better approaches exist that do not involve stripping subcontractors and suppliers and taxpayers of needed protections. The construction and surety industries have existing programs to mentor and educate small and minority businesses, so they are positioned for long-term success as businesses, including enhancing their standing to obtain financial and surety credit. Specifically, the Office of Surety Guarantees of the U.S. Small Business Administration (SBA) offers a bond guarantee program aimed at providing bonds to small and emerging construction businesses.

By removing needed protections and transferring the risk of losses to taxpayers, HB 1897 may be imprudent. HB 1897, as introduced, does not serve the best interests of the State of Washington, its taxpayers, or its many businesses performing as subcontractors and suppliers on public construction projects.

Recently, NASBP and the SBA signed a Memorandum of Understanding (MOU) which includes offering a half-day free bonding awareness programs in select cities, that include Seattle, for small and emerging construction businesses. The intent of the Bonding Awareness Program is to help small and emerging contractors enter the bonding market so they may compete and grow effectively in the construction marketplace. The Seattle Program will be held on May 18, 2017, where the following topics are scheduled to be addressed: the necessary steps small contractors should take to secure surety credit; the type of insurance coverage small contractors should obtain; construction accounting principles and financial systems for small and emerging contractors; and areas in construction law, including: contracting issues, change orders and equitable contract price adjustments, and remedies available to contractors involved in legal disputes. Also scheduled is a session devoted to the federal procurement process, as well as ways that a small business can access state, local, and private contracting opportunities. We would appreciate the opportunity to discuss this program with you and provide further details to your small contractor constituents.

NASBP urges you to leave the bonding threshold at its present level of \$35,000. If you have any questions concerning the issues raised regarding HB 1897, or the SBA/NASBP Bonding Awareness Program please feel free to contact me at 202-686-3700 or lleclair@nasbp.org.

Respectively submitted for your consideration,



Larry LeClair
Director, Government Relations

Cc: Members of the House Technology & Economic Development Committee