



National Association of Surety Bond Producers

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Delivered via email to gene.chandler@leg.state.nh.us and mcconkey2@hotmail.com

Representative Gene Chandler
Chair, House Public Works and Highways
Committee
PO Box 296
Bartlett, NH 03812-0296

Representative Mark McConkey
Vice Chair, House Public Works and Highways
Committee
10 Clover Lane #1
Freedom, NH 03836-4205

RE: Concerns with SB 549, legislation to establish the public-private infrastructure oversight commission

Dear Representatives Chandler and McConkey;

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 New Hampshire, I am contacting you regarding our concerns with Senate Bill 549, which establishes the public-private infrastructure oversight commission. We are concerned that nowhere in these guidelines are the protection and security provided by surety bonds mentioned.

NASBP would request that you consider amending SB 549, Section 228:113 – Liability Insurance in the following manner by inserting this sentence at the conclusion of the current text:

“The contract shall require security in the form of a performance bond and a payment bond in keeping with the requirements of NH RSA 447:16.”

The New Hampshire Legislature recognized there is sound public policy for the universal requirement of surety bonds on state public works projects by enacting NH RSA 447:16 requiring payment and performance for 100% of the contract amount. The payment bond guarantees that covered subcontractors, suppliers, and laborers on the job will get paid. Generally, mechanics liens cannot be asserted against public property. Subcontractors, suppliers, and laborers on public works projects must rely on the general contractor's payment bond for protection in the event of nonpayment. If no payment bond is required, these parties are left with little or no means to collect for their services and supplies if the contractor is unable or unwilling to pay them. The performance bond guarantees that the public works project will be undertaken by a qualified company and is completed according to the construction contract.

While a P3 project may be managed by a private entity, the completed construction project is a public works project and an asset of the state. Thus, the public owner, taxpayers, subcontractors, and suppliers must be protected as on any other public works project. Bonded

projects undertaken for public benefit and welfare through P3 contracts offer contracting authorities proper prequalification of entities performing construction services; guarantees of performance from solvent, third-party corporate sureties; and payment remedies for unpaid subcontractors and suppliers.

NASBP urges you to include the protection of surety bonds in these guidelines for a public-private infrastructure commission. If you have any questions concerning the issues raised, please feel free to contact me at 202-686-3700 or lleclair@nasbp.org.

Respectively submitted for your consideration,

A handwritten signature in black ink, appearing to read "Larry LeClair". The signature is fluid and cursive, with the first name "Larry" and last name "LeClair" clearly distinguishable.

Larry LeClair
Director, Government Relations

cc: Members of the House Public Works and Highways Committee