



National Association of Surety Bond Producers

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Delivered via email

Representative Sam Hunt
Chair, House State Government
Committee
438B Legislative Building
Olympia, WA 98504-0600

Representative Steve Bergquist
Vice Chair, House State Government
Committee
322 John L. O'Brien Legislative Building
Olympia, WA 98504-0600

RE: Concerns with HB 2129, legislation to increase surety bond threshold

Dear Chair Hunt and Vice Chair Bergquist;

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 2129, which increases the statutory bond threshold on contracts awarded 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 2129 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. The absence of a payment bond can mean that such businesses will not remain viable.

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. By working with the surety and construction communities, such programs could be put in place quickly.

Established federal assistance programs already exist to assist small and minority contractors with obtaining bonding and business assistance. For example, the Office of Surety Guarantees of the U.S. Small Business Administration offers a bond guarantee program aimed at providing bonds to small and emerging construction businesses. Further, the Office of Small and Disadvantaged Business Utilization of the U.S. Department of Transportation offers lending and other programs specifically designed to benefit small and emerging contractors seeking to perform transportation contracts. NASBP members in Washington have previously participated in bonding education programs for small businesses and are committed to engaging further in them in the future.

By removing needed protections and transferring the risk of losses to taxpayers, HB 2129 is imprudent and fiscally dangerous. HB 2129, 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.

The majority of states' bond thresholds are below \$150,000. NASBP urges you to leave the bonding threshold at its present level of \$35,000. 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,



Larry LeClair
Director, Government Relations

cc: Members of the House State Government Committee
Stuart O'Farrell, NASBP Director-At-Large, Arthur J. Gallagher & Co., Seattle, WA
Eric Zimmerman, NASBP Director-At-Large, Propel Insurance, Seattle, WA
Brent Olson, NASBP Regional Director, Anchor Insurance & Surety Inc., Portland, OR