

Chair Holvey, Vice-Chair, members of the committee,

My name is James Chaney, and I am an attorney with Lane County, having represented Lane County in all construction matters since 2011. Prior to that time, I spent 25 years as the president and primary owner of a commercial building contractor based in Eugene, a company that also worked as a subcontractor for structural concrete work. So I have seen many of the issues with retainage from multiple points of view: owner, prime contractor, and subcontractor.

The others who provided testimony on this bill have covered better than I can the technical and practical benefits of the proposed changes for provision of retainage bonds. What I can offer is primarily the perspective of how the existing law affects public agencies, and how the changes will make it easier for agencies to make sure that subcontractors get paid promptly and properly. The current statute requires that, unless the prime contractor opts for retainage to go into a simple interest-bearing account, then the agency must open an interest-bearing escrow account. In practice, no agency I am aware of is using escrow accounts, due to a lack of third-party escrow agents who can fulfill that role.

The County had discussions with both banks and escrow companies, and while we were assured it was *possible* to establish and maintain such accounts, the costs for doing so in all cases greatly exceeded the amount of interest that would be earned on the funds held in escrow. The statute does not allocate those costs to either the contractor or the agency, but the one thing that has been certain is that neither the agency nor the contractor has been willing to pay this extra cost, on top of the additional staff resources that are required to establish and monitor such accounts.

Nonetheless, the problem of getting subcontractors paid their retention promptly remains a significant problem for the industry. It is a problem our agency sees—when a prime contractor fails to complete its work promptly or properly and the agency withholds funds for the improperly performed work, the contractor then doesn't pay the retainage of the subs who have completed their work properly, and we see the claims come in.

Ultimately, of course, the agency is protected: we have a performance bond from the contractor that will make us whole if the contractor does not finish, and we have the resources to wait for the bond company to pay off. The subcontractors, however, must independently pursue bond claims just to get paid, and many of those subs lack the resources to pay the costs for attorneys and to wait for their already-earned money.

The proposed changes, by giving subcontractors and second-tier subcontractors a more direct route to being paid, reduce the workload of the agency, and provide this guarantee of payment without adding a significant cost to the project. Lane County supports the proposed changes contained in HB 2870.

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