

April 5, 2017

Representative Paul Holvey
Oregon State Capitol
900 Court St NE
Salem, OR 97301

Chair Holvey,

Thank you for the opportunity for the Association of Oregon Counties to comment on HB 3203, specifically the -1 amendment to the bill. While we oppose both the base bill and the -1 amendment, we have been engaged in conversations with the contracting associations (specifically the Oregon Concrete and Aggregate Producers Association) over the past several months and appreciate the constructive and productive nature of those discussions. Indeed, a few of the changes reflected in the -1 amendment are a product of those discussions. The issue of public improvements being performed in-house by public employees as opposed to being contracted out to the private sector has been debated for decades and is likely to continue regardless of the outcome of this bill.

There are certain core concepts related to this issue with which we agree with the contractor coalition:

- The concept of “least cost” or “low bid” in constructing public improvements is designed to provide the biggest value for the taxpayer dollar.
- If a county is going to perform a substantial public improvement with its own forces, the county public works department should perform a basic cost analysis comparing the in-house cost to the estimated cost of contracting the project to the private sector, and submit that analysis to BOLI.
- If a public agency is either ignoring the law or not following the law correctly, there should be oversight and enforcement designed to bring an agency into compliance with the law.

That said, we believe there are still significant problems with the bill, including:

- The cost analysis must be, to the extent possible, an “apples to apples” comparison. Including the cost of a warranty on the public agency side just because a contractor is required to provide one is one example of straying from that principle.
- The \$125,000 threshold for public improvement projects that require a cost analysis went into effect in 1997 and has never been increased. The cost of materials and labor has increased tremendously since 1997; the threshold should be raised considerably to reflect current reality.

- Changing the “and” to “or” with respect to the current definition of a public improvement being triggered by the \$125,000 threshold and paving at a depth greater than two or more inches is a significant policy change and one that creates a myriad of problems, both for public works departments and municipal utilities. Maintaining a competent, trained in-house workforce able to perform maintenance and respond to emergencies is critical and necessary.
- The enforcement section of the bill contains escalating levels of penalties toward public agencies that violate the law; however, provides no commensurate penalty to dissuade contractors from continually filing unfounded challenges. We believe that should be considered as well.

In closing, we believe if this concept is to move forward it needs to strike a balance between providing better oversight of the use of public dollars without adding considerable administrative burdens and reshaping the traditional dividing line between ordinary maintenance and legitimate public improvement projects. In our estimation, HB 3203 does not yet satisfy that balance but we remain hopeful it will as the session progresses.

Mike Eliason
Association of Oregon Counties

