

February 21, 2019

Chair Barker & Members of the  
House Business & Labor Committee  
Oregon State Capitol  
900 Court Street NE  
Salem, OR 97301

Chair Barker and Members of the Committee:

SDAO has approximately 940 members representing about 32 different types of districts including fire, parks and recreation, library, water, sewer, irrigation, and vector control to name a few. Our membership stretches to every corner of the state providing the citizens of Oregon with cost effective and efficient services. Thank you for this opportunity to share SDAO's opposition to HB 2415 and ask you to not move forward with the proposal for several reasons.

The bill prohibits retainage or performance security deduction from portion of progress payment relating to cost of materials or equipment stored at job site. We have members that have expressed concerns if there are defective materials or equipment. If retainage is not held on this portion of the job, then the owner will have more difficulty in seeking a remedy for defective products that are part of a construction contract. Furthermore, the bill limits the amounts that may be withheld from release of retainage. This could be a problem if there is a dispute over quality and completion of work.

The bill also prohibits retainage if a contractor has supplied performance security equivalent to the full amount that can be deducted as retainage on the original contract price. We do not have any issues with this, if the bonding companies will allow this. We are currently unaware of any bonds that would allow partial deduction in lieu of retainage. If the security is in the form of a financial deposit, then this would be acceptable.

Under the proposal, it would require that retainage be placed in interest-bearing escrow account if the contract price exceeds \$250,000. This will add unnecessary complexity and cost to projects. Furthermore, if an owner is forced to access these funds to complete a project then we would have to go through the escrow account to get them.

Finally, the bill also permits the award of costs and attorney fees to prevailing plaintiff in an action for the release of a retainage amount that is due. From our perspective, this

seems a bit excessive. If there is a dispute about the quality of work, we should be requiring mediation. There should not be a presumed entitlement to legal fees in cases like this and could result in increased litigation.

In short, HB 2415 is very problematic in that it eliminates much of the ability of an owner to ensure that construction work is completed adequately. Relying on performance bonds is rarely an acceptable alternative. SDAO opposes the broad removal of a key contracting safeguards that protect the public's interest in our contracting practices.

Thank you for your consideration

Sincerely,

Mark J. Landauer  
Government Affairs  
Special Districts Association of Oregon