

May 19, 2015

TO: Members of the Senate Workforce Subcommittee
FROM: Stephen Rae of Liberty Mutual on behalf of the Ohio Insurance Institute
SUBJECT: HB 64 – Public Private Partnership (P3) Bonding

Chairman Beagle, Vice Chair Williams, and members of the Senate Workforce Subcommittee, my name is Stephen Rae, General Counsel for Liberty Mutual Surety. Liberty Mutual is the largest writer of surety bonds in the state of Ohio. I am here today to testify on behalf of the Ohio Insurance Institute (OII) and its members, and to give some insight into the importance of surety bonding for P3 projects in Ohio, and why an amendment to ensure this is right for Ohio.

Surety performance & payment bonds are required on traditional Ohio public construction projects pursuant to Ohio Rev. Code Section 153.54, and for ODOT projects Ohio Rev. Code Section 5525.16, in order to protect the public's interest on several levels. First, surety bonds serve a pre-qualification function as a surety company diligently examines a contractor's financial and technical capability to meet the construction contract obligations before it will issue a surety bond on behalf of the contractor. The surety company puts its balance sheet at risk to support the contractor. Second, a surety performance bond is a contract completion guarantee. If the contractor cannot meet its contractual obligations, the surety is obligated to step in and complete the contract for the remaining contract amount thus protecting the public coffers. The surety company must absorb the excess completion costs, not the public owner. Third, a surety payment bond protects subcontractors and suppliers who perform work on these projects in the event that they are not paid. As these are public projects, subcontractors and suppliers cannot lien the projects to secure payment. A payment bond therefore helps to level the playing field & protect these critical and often local participants on public construction projects. We believe the public's interest in the construction of public infrastructure through P3 projects should be similarly protected.

About a year and a half ago the OII and several other companies who work within the surety bonding realm, approached the Ohio Department of Transportation to discuss codifying the P3 surety bonding process in Ohio. Though work began on the issue of requiring performance and payment bonds, it was never fully achieved during the last General Assembly, and ODOT agreed to return to the issue during this General Assembly. At the start of this General Assembly we reconvened with ODOT and were able to agree upon and craft language which protects the public's interest in P3 projects by making sure the P3 design-build phase obligations are completed and the P3 subcontractors and suppliers are protected. Fortunately, the current administration and ODOT have set a high standard in terms of requiring surety bonding on major P3 projects, and, ultimately, our proposed language would codify this administration's current prudent practice to ensure that, in the future, there is no shift away from the responsible approach ODOT is currently taking.

P3 projects involve shifting many traditional public sector responsibilities to the private sector including design, finance, operation and maintenance over the life or term of the project. The design-build phase costs for P3 projects may, for some projects, exceed a billion dollars and the operation and maintenance phase of these P3 projects may last for 30 – 50 years or more. But these projects are still the construction of public infrastructure and the public's interest must be protected throughout these projects and particularly during the design-build phase. The amendment we are proposing would require performance and payment bonds to support the design-build phase obligations and thereby

protect the public's interest in project completion as well as provide subcontractor and supplier payment protection.

Though, on its face, this language may appear complex, it is simply requiring that ODOT, as it currently does, appropriately require performance and payment bonds to support the design-build phase obligations of P3 contracts. It also, as agreed upon with ODOT, ensures that any current or future ODOT director does not add terms and conditions that limit or preclude surety bonds during the design-build phase of P3 projects. In the end, this change to the revised code would protect Ohio taxpayers from errors during the design-build phase of these P3 projects and protect subcontractors and suppliers, many of whom will be Ohio businesses and Ohio residents on P3 projects.

Thank you for allowing me to testify and I would be happy to answer any questions you may have.