

RICHARD L. HANNA
22ND DISTRICT, NEW YORK
COMMITTEE ON
TRANSPORTATION & INFRASTRUCTURE
COMMITTEE ON
SMALL BUSINESS
CONTRACTING AND WORKFORCE SUBCOMMITTEE
CHAIRMAN
JOINT ECONOMIC COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-3222

WASHINGTON OFFICE:
319 CANNON H.O.B.
WASHINGTON, D.C. 20515
PHONE: 202-225-3665
FAX: 202-225-1891

DISTRICT OFFICES:
49 COURT STREET, SUITE 230
BINGHAMTON, NY 13901
PHONE: 607-723-0212
FAX: 607-723-0215
258 GENESEE STREET
UTICA, NY 13502
PHONE: 315-724-9740
FAX: 315-724-9746
<http://hanna.house.gov>

April 3, 2016

The Honorable Bill Shuster
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Shuster and Ranking Member DeFazio:

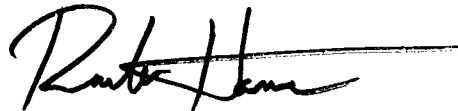
I respectfully request that the 2016 Water Resources Reform and Development Act (WRRDA) include provisions clarifying that the Miller Act and its associated performance and payment bonding requirements or equivalent bonding requirements apply to any P3 projects funded or financed by the federal government.

As you know, the Miller Act requires that all federal construction contracts be bonded to ensure the work is completed according to the contract and that workers, subcontractors, suppliers and others get paid. However, there is some concern that such bonding requirements may not apply to public works projects funded by the federal government if they are carried out by a private entity under a P3 agreement (such as those authorized by Section 5014 of the Water Resources Reform and Development Act of 2014 (P.L. 113-121)). In addition, there are similar concerns that bonding requirements may not apply to public works projects *financed* by the federal government, such as those authorized by Subtitle C of (P.L. 113-121).

As the Chairman of the Small Business Subcommittee on Contracting and Workforce and based on my thirty years of experience in the construction industry, I know first-hand the importance of bonding requirements in protecting taxpayer investments and in providing payment assurances to the many businesses furnishing labor, materials, and equipment to projects. Although these two programs have yet to be implemented, I am concerned that the current authorizing language is not clear on the applicability of Miller Act or equivalent bonding requirements.

Therefore, I respectfully request that the Committee affirm in the 2016 WRRDA bill that performance and payment bonding requirements apply to these two programs. I have attached draft legislative text for your consideration and am open to working with your expert staff on the Water Resources Subcommittee to address this issue most appropriately. I look forward to working with you on this technical, but important issue and thank you for your consideration.

Warm Regards,



Richard Hanna

Enclosure

Legislative Proposal:

Section 5014(b)(3) of P.L. 113-121 is amended by inserting "performance and payment bonding," after "scope, financing, budget," and before "design, and construction".

Section 5028 of P.L. 113-121 is amended by

- a) Striking subparagraph (C) and
- b) Inserting the following:
 - (C) SECURITY FEATURES.—The Secretary or the Administrator, as applicable, shall ensure that
 - (i) any financing for the project has appropriate security features, such as a rate covenant, supporting the project obligations to ensure repayment, and
 - (ii) for activities under section 5027(2), the contractor shall be required to furnish performance and payment bonds in amounts equal to the total amount payable by the terms of the contract.