

# Improve Retainage for the Construction Industry

## Support HB 2870

### **Background**

In the 2019 Legislative Session, HB 2415 was passed, that required retainage to be held in an interest bearing escrow account. Since the law passed, there have been issues with implementation. Because of these issues, Associated Wall and Ceiling Contractors has worked with AGC and members of the Oregon State Bar Construction Law Section to develop a fix for the issues that have arisen in the bill's implementation. The Construction Law Section group contained attorneys with a variety of backgrounds, who have represented local government, general contractors, and subcontractors. HB 2870 is the compromise product of these groups.

### **HB 2870**

House Bill 2870 provides a solution to the implementation issues of previously passed legislation. The fix found in the bill is based off Washington's public contracting law around retainage. The bill would allow for retainage bonds to be used by contractors to avoid having their funds kept in retainage. The bonds allow the subcontractors to keep their funds, while giving the general contractors the protection of the bond.

**Public Work:** A subcontractor can request that the general contractor submit a bond to the contracting agency for the subcontractor's portion of the retainage. The contractor may withhold the subcontractor's portion of the contractor's premium for the retainage bond obtained at the subcontractor's request. The contracting agency must accept the bond, unless the contracting agency makes written findings showing good cause for refusing to accept it, the bond is not commercially available, or the subcontractor refuses to pay the subcontractor's portion of the bond premium and to provide the contractor with a like bond.

**Private Work:** At any time prior to final payment for a private construction project, a subcontractor may request the contractor to submit a bond to the project owner and lender for that portion of the contractor's retainage pertaining to the subcontractor in a form acceptable to the project owner and lender and from a bonding company meeting standards established by the owner and lender. The contractor may withhold the subcontractor's portion of the bond premium. Within thirty days of the request, the contractor shall provide, and the owner and lender shall accept a bond meeting these requirements unless the bond is not commercially available, or the subcontractor refuses to pay the subcontractor's portion of the bond premium and to provide the contractor with a like bond.

**Passage of this compromise bill provides the construction industry the fix it needs, allowing subcontractors the option to utilize retainage bonds.**

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