



From the Desk of Senator
Kathleen Taylor

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Support Industry-Backed Compromise Solution for Retainage in Construction with HB 4006A

Retainage is a portion (up to 5%) of a monthly progress payment that is withheld by an owner on a construction project, to ensure completion or resolution of any issues that may arise at the end of the project. It is money that has been earned by the contractor but is held by the owner as security. A contractor may also withhold retainage from progress payments to subcontractors.

In 2019, HB 2415 passed, requiring that retainage on public and private sector projects be held in interest-bearing escrow accounts. However, these escrow accounts are not generally available, and the law has raised a variety of practical questions, making compliance difficult.

The commercial construction industry as a whole has come together to develop a solution that works for all: **removing the escrow requirement and expanding existing law that allows surety bonds to be posted in lieu of retainage.** In this solution, contractors, and now subcontractors, can choose to provide a surety bond instead of having retainage withheld. This allows more financial flexibility for contractors and their subcontractors, while still providing security to owners.

Supported by labor, union subcontractor groups, and contractor associations, this bill has been drafted in coordination with the broader construction community, including legal and surety experts. Our coalition has also worked with state agencies to ensure that they are comfortable with the change. The bill is a compromise that ensures that all parts of the construction industry benefit from the proposed changes.

Surety bonds in lieu of retainage, including subcontractor retainage bonds, are also used in Washington state. Initially applicable only on public works, the Washington program was expanded in the 2023 legislative session to include private commercial construction. Because many Oregon contractors also work in Washington, this process is already familiar to many Oregon contractors.

Retainage has been contentious for years—Oregon’s first legislative attempt to resolve conflicts was in 1975. **This compromise bill comes from the House with unanimous support and is an opportunity to improve retainage law with support from the entire industry, while removing current compliance obstacles across the state, and we urge your support.**

For more information, please contact Kirsten Adams, John Killin, Brian Krieg, or Lorne Bulling.