

Senate Bill 657

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Reduces percentage of construction contract, home improvement contract or public improvement contract payment that may be held as retainage.

A BILL FOR AN ACT

1
2 Relating to retainage on contract payments; creating new provisions; and amending ORS 279C.555,
3 279C.570 and 701.420.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 279C.555 is amended to read:

6 279C.555. The withholding of retainage by a contractor or subcontractor on public improvement
7 contracts shall be in accordance with ORS 701.420 and 701.430 except when the charter of the
8 contracting agency contains provisions requiring retainage by the contracting agency of more than
9 *[five]* **one** percent of the contract price of the work completed.

10 **SECTION 2.** ORS 279C.570 is amended to read:

11 279C.570. (1) It is the policy of the State of Oregon that all payments due on a public improve-
12 ment contract and owed by a contracting agency shall be paid promptly. No contracting agency is
13 exempt from the provisions of this section.

14 (2) Contracting agencies shall make progress payments on the contract monthly as work
15 progresses on a public improvement contract. Payments shall be based upon estimates of work
16 completed that are approved by the contracting agency. A progress payment is not considered ac-
17 ceptance or approval of any work or waiver of any defects therein. The contracting agency shall
18 pay to the contractor interest on the progress payment, not including retainage, due the contractor.
19 The interest shall commence 30 days after receipt of the invoice from the contractor or 15 days after
20 the payment is approved by the contracting agency, whichever is the earlier date. The rate of in-
21 terest charged to the contracting agency on the amount due shall equal three times the discount
22 rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve dis-
23 trict that includes Oregon on the date that is 30 days after receipt of the invoice from the con-
24 tractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier
25 date, but the rate of interest may not exceed 30 percent.

26 (3) Interest shall be paid automatically when payments become overdue. The contracting agency
27 shall document, calculate and pay any interest due when payment is made on the principal. Interest
28 payments shall accompany payment of net due on public improvement contracts. The contracting
29 agency may not require the contractor to petition, invoice, bill or wait additional days to receive
30 interest due.

31 (4) When an invoice is filled out incorrectly, when there is any defect or impropriety in any

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 submitted invoice or when there is a good faith dispute, the contracting agency shall so notify the
2 contractor within 15 days stating the reason or reasons the invoice is defective or improper or the
3 reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven
4 days of being notified by the contracting agency, may not cause a payment to be made later than
5 specified in this section unless interest is also paid.

6 (5) If requested in writing by a first-tier subcontractor, the contractor, within 10 days after re-
7 ceiving the request, shall send to the first-tier subcontractor a copy of that portion of any invoice,
8 request for payment submitted to the contracting agency or pay document provided by the con-
9 tracting agency to the contractor specifically related to any labor or materials supplied by the
10 first-tier subcontractor.

11 (6) Payment of interest may be postponed when payment on the principal is delayed because of
12 disagreement between the contracting agency and the contractor. Whenever a contractor brings
13 formal administrative or judicial action to collect interest due under this section, the prevailing
14 party is entitled to costs and reasonable attorney fees.

15 (7) A contracting agency may reserve as retainage from any progress payment on a public im-
16 provement contract an amount not to exceed *[five]* **one** percent of the payment. As work progresses,
17 a contracting agency may reduce the amount of the retainage and the contracting agency may
18 eliminate retainage on any remaining monthly contract payments after 50 percent of the work under
19 the contract is completed if, in the contracting agency's opinion, such work is progressing satisfac-
20 torily. Elimination or reduction of retainage shall be allowed only upon written application by the
21 contractor, and the application shall include written approval of the contractor's surety. However,
22 when the contract work is 97.5 percent completed the contracting agency may, at the contracting
23 agency's discretion and without application by the contractor, reduce the retained amount to 100
24 percent of the value of the contract work remaining to be done. Upon receipt of a written applica-
25 tion by the contractor, the contracting agency shall respond in writing within a reasonable time.

26 (8) The retainage held by a contracting agency shall be included in and paid to the contractor
27 as part of the final payment of the contract price. The contracting agency shall pay to the con-
28 tractor interest at the rate of 1.5 percent per month on the final payment due the contractor, in-
29 terest to commence 30 days after the work under the contract has been completed and accepted and
30 to run until the date when the final payment is tendered to the contractor. The contractor shall
31 notify the contracting agency in writing when the contractor considers the work complete and the
32 contracting agency shall, within 15 days after receiving the written notice, either accept the work
33 or notify the contractor of work yet to be performed on the contract. If the contracting agency does
34 not, within the time allowed, notify the contractor of work yet to be performed to fulfill contractual
35 obligations, the interest provided by this subsection shall commence to run 30 days after the end
36 of the 15-day period.

37 (9)(a) The contracting agency shall pay, upon settlement or judgment in favor of the contractor
38 regarding any dispute as to the compensation due a contractor for work performed under the terms
39 of a public improvement contract, the amount due plus interest at the rate of two times the discount
40 rate, but not to exceed 30 percent, on 90-day commercial paper in effect at the Federal Reserve Bank
41 in the Federal Reserve district that includes Oregon on the date of the settlement or judgment, and
42 accruing from the later of:

43 (A) The due date of any progress payment received under the contract for the period in which
44 such work was performed; or

45 (B) Thirty days after the date on which the claim for the payment under dispute was presented

1 to the contracting agency by the contractor in writing or in accordance with applicable provisions
2 of the contract.

3 (b) Interest shall be added to and not made a part of the settlement or judgment.

4 **SECTION 3.** ORS 701.420, as amended by section 8, chapter 77, Oregon Laws 2010, is amended
5 to read:

6 701.420. (1) Partial payment is allowed and may be made on contracts for construction and home
7 improvement. Except as provided in ORS 701.430 (2), an owner, contractor or subcontractor may
8 withhold as retainage an amount equal to not more than [five] **one** percent of the contract price of
9 the work completed. Partial payment allowed under this subsection is not acceptance or approval
10 of some of the work or a waiver of defects in the work.

11 (2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per
12 month on the final payment due the contractor or subcontractor. Except as provided in ORS 701.430
13 (2), the interest shall commence 30 days after the contractor or subcontractor has completed and the
14 owner has accepted the work under the contract for construction for which the final payment is due.
15 The interest shall run until the date when final payment is tendered to the contractor or subcon-
16 tractor. When the contractor or subcontractor considers the work that the contractor or subcon-
17 tractor is contracted to perform to be complete, the contractor or subcontractor shall notify the
18 party to whom the contractor or subcontractor is responsible for performing the construction work
19 under the contract. The party shall, within 15 days after receiving the notice, either accept the work
20 or notify the contractor or subcontractor of work yet to be performed under the contract. If the
21 party does not accept the work or does not notify the contractor or subcontractor of work yet to
22 be performed within the time allowed, the interest required under this subsection shall commence
23 30 days after the end of the 15-day period.

24 (3) When a contractor pays a subcontractor in full, including the amount the contractor with-
25 held as retainage, the owner with whom the contractor has the contract shall pay the contractor,
26 out of the amount that the owner withheld from the contractor as retainage, a sum equal to the
27 amount of retainage that the contractor paid the subcontractor. The contractor shall notify the
28 owner when the contractor pays a subcontractor in full under this section and the owner shall,
29 within 15 days after receiving the notice, pay the contractor the amount due the contractor under
30 this subsection. Interest on the amount due the contractor at the rate of one percent per month shall
31 commence 30 days after the owner receives notice of full payment to the subcontractor.

32 **SECTION 4. The amendments to ORS 279C.555, 279C.570 and 701.420 by sections 1 to 3 of**
33 **this 2011 Act apply to contracts entered into on or after the effective date of this 2011 Act.**

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