

SENATE AMENDMENTS TO SENATE BILL 890

By COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS
PROTECTION

April 15

1 On page 1 of the printed bill, line 3, delete “279B.220,” and after “279C.515” insert “,
2 279C.570”.

3 Delete lines 5 through 29 and delete page 2.

4 On page 3, delete lines 1 through 13.

5 In line 14, delete “2” and insert “1”.

6 After line 45, insert:

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

8 “279C.570. (1) *[It is]* The policy of the State of Oregon is that a **contracting agency shall pay**
9 **promptly** all payments **that the contracting agency owes and that are** due on a public im-
10 **provement contract** *[and owed by a contracting agency shall be paid promptly. No]*. **All** contracting
11 *[agency is exempt from]* **agencies are subject to** the provisions of this section.

12 “(2) **A** contracting *[agencies]* **agency shall make progress payments on** *[the]* **a public improve-**
13 **ment contract** monthly as work progresses on *[a public improvement contract. Payments shall be*
14 *based]* **the contract. The contracting agency shall base the amount of each payment** upon es-
15 **timates of work completed that** *[are approved by]* the contracting agency **approves**. A progress
16 **payment is not** *[considered]* acceptance or approval of *[any]* work or a waiver of any defects
17 *[therein]* **in the work**. The contracting agency shall pay to the contractor interest on the progress
18 **payment, not including retainage, due the contractor. The interest shall commence 30 days after**
19 *[receipt of]* **the contracting agency receives** the invoice from the contractor or 15 days after the
20 *[payment is approved by the contracting agency,]* **contracting agency approves the payment,**
21 **whichever is the earlier date. The rate of interest** *[charged to]* the contracting agency **shall pay** on
22 **the amount due** *[shall equal]* **equals** three times the discount rate on 90-day commercial paper in
23 **effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date**
24 **that is 30 days after** *[receipt of]* **the contracting agency receives** the invoice from the contractor
25 **or 15 days after the** *[payment is approved by the contracting agency,]* **contracting agency approves**
26 **the payment, whichever is the earlier date, but the rate of interest may not exceed 30 percent.**

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

32 “(4) *[When an invoice is filled out incorrectly, when there is any]* **If a contractor fills out an**
33 **invoice incorrectly, if a defect or impropriety exists in** *[any submitted]* **an invoice that the con-**
34 **tractor submits or** *[when]* **if there is a good faith dispute, the contracting agency shall** *[so]* **notify**
35 **the contractor of the error, defect, impropriety or dispute** within 15 days, stating the reason or

1 reasons the invoice is **incorrect**, defective or improper or the reasons for the dispute. [A *defective*
2 *or improper invoice, if corrected by*] **If the contractor corrects a defective or improper invoice**
3 **within seven days [of being notified by] after the contracting agency notifies the contractor of the**
4 **defect or impropriety, the contracting agency may not [cause] make a payment [to be made] later**
5 **than specified in this section unless the contracting agency also pays interest [is also paid].**

6 “(5) If [requested in writing by] a first-tier subcontractor[, the contractor, within 10 days after
7 receiving the request, shall send to the first-tier subcontractor a copy of that portion of any] **requests**
8 **a copy of an invoice, a request for payment that the contractor submitted to the contracting**
9 **agency or a pay document [provided by] the contracting agency provided to the contractor that is**
10 **specifically related to any labor or materials [supplied by] the first-tier subcontractor supplied, the**
11 **contractor within 10 days after receiving the request shall send a copy of the portion of the**
12 **invoice, request for payment or pay document that relates to the first-tier subcontractor’s**
13 **provision of labor or materials.**

14 “(6) [Payment of interest may be postponed when payment on] **A contracting agency may post-**
15 **pone paying interest if the contracting agency delays paying** the principal [is delayed] because
16 of a disagreement between the contracting agency and the contractor. [Whenever] **If a contractor**
17 **brings formal administrative or judicial action to collect interest due under this section, the pre-**
18 **vailing party is entitled to costs and reasonable attorney fees.**

19 “(7) A contracting agency may reserve as retainage from any progress payment on a public im-
20 provement contract an amount not to exceed five percent of the payment. As work progresses, a
21 contracting agency may reduce the amount of the retainage and the contracting agency may elimi-
22 nate retainage on any remaining monthly contract payments after 50 percent of the work under the
23 contract is completed if, in the contracting agency’s opinion, [such] **the work is progressing satis-**
24 **factorily. [Elimination or reduction of retainage shall be allowed only upon written application by the**
25 **contractor, and the application shall include written approval of the contractor’s surety.] The con-**
26 **tracting agency may not eliminate or reduce retainage unless the contractor applies in**
27 **writing for the elimination or reduction with the written approval of the contractor’s surety.**
28 However, when the contract work is 97.5 percent completed the contracting agency [may], at the
29 contracting agency’s discretion and without **the contractor’s** application [by the contractor], **may**
30 **reduce the retained amount to 100 percent of the value of the contract work remaining. [to be done.**
31 **Upon receipt of a written application by the contractor,]** The contracting agency shall respond in
32 writing within a reasonable time **after receiving a written application from the contractor.**

33 “(8) [The retainage held by a contracting agency shall be included in and paid to the contractor
34 as part of the final payment of the contract price. The contracting agency] **A contracting agency shall**
35 **pay to the contractor as part of the payment of the final contract price the retainage that**
36 **the contracting agency holds. If, 30 days after the contractor completes work under the**
37 **public improvement contract and the contracting agency accepts the work, the contracting**
38 **agency has not paid the final payment due the contractor, the contracting agency shall pay**
39 **to the contractor interest at the rate of 1.5 percent per month on the final payment due [the con-**
40 **tractor, interest to commence 30 days after the work under the contract has been completed and ac-**
41 **cepted and to]. The interest shall continue to run until the date when the contracting agency**
42 **tenders the final payment [is tendered] to the contractor. The contractor shall notify the contract-**
43 **ing agency in writing when the contractor considers the work complete and the contracting agency**
44 **shall, within 15 days after receiving the written notice, either accept the work or notify the con-**
45 **tractor of work yet to be performed on the contract. If the contracting agency does not, within the**

1 time allowed, notify the contractor of work yet to be performed to fulfill contractual obligations, the
2 interest provided by this subsection shall commence to run 30 days after the end of the 15-day pe-
3 riod.

4 “(9)(a) If a first-tier subcontractor completes the first-tier subcontractor’s work under
5 the public improvement contract, the first-tier subcontractor may request that the con-
6 tractor apply as provided in subsection (7) of this section to the contracting agency to elim-
7 inate retainage on amounts the contracting agency must pay under the terms of the public
8 improvement contract for the work that the first-tier subcontractor performed.
9 Notwithstanding the contracting agency’s reservation of retainage from progress payments
10 to the contractor under subsection (7) of this section and the requirement under subsection
11 (8) of this section for the contractor to complete and the contracting agency to accept the
12 contractor’s other work under the public improvement contract, and except as provided in
13 paragraph (b) of this subsection, the contracting agency not later than 60 days after receiv-
14 ing an application described in this paragraph shall eliminate and pay to the contractor for
15 the first-tier subcontractor’s benefit any retainage the contracting agency holds on amounts
16 due for work the first-tier subcontractor performed under the public improvement contract.

17 “(b) The requirement under paragraph (a) of this subsection for the contracting agency
18 to eliminate and pay retainage the contracting agency holds within 60 days after receiving
19 an application does not apply if the contracting agency in good faith disputes that the first-
20 tier subcontractor has completed work under the public improvement contract.

21 “(c) The contracting agency’s payment of retainage under this subsection to the con-
22 tractor on the first-tier subcontractor’s behalf does not affect the contractor’s right to
23 withhold amounts as provided in ORS 279C.580.

24 “[9)(a)] (10)(a) The contracting agency shall pay, upon settlement or judgment in favor of [the]
25 a contractor [regarding any] in a dispute as to the compensation due [a] the contractor for work
26 performed under the terms of a public improvement contract, the amount due plus interest at the
27 rate of two times the discount rate, but not to exceed 30 percent, on 90-day commercial paper in
28 effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date
29 of the settlement or judgment, and accruing from the later of:

30 “(A) The due date of any progress payment received under the contract for the period in which
31 [such] the work was performed; or

32 “(B) Thirty days after the date on which the contractor presented the claim for the payment
33 that is under dispute [was presented] to the contracting agency [by the contractor] in writing or in
34 accordance with applicable provisions of the contract.

35 “(b) Interest [shall] must be added to and not made a part of the settlement or judgment.”.

36 On page 6, after line 43, insert:

37 “(C) Provide the first-tier subcontractor with a standard form that the first-tier subcontractor
38 may use as an invoice or other method with which to claim a payment due from the contractor.

39 “(D) Except as otherwise provided in this subparagraph, use the same form and regular admin-
40 istrative procedures for processing payments during the entire term of the subcontract. A contractor
41 may change the form or the regular administrative procedures the contractor uses for processing
42 payments if the contractor notifies the subcontractor at least 45 days before the date on which the
43 contractor makes the change.

44 “(E) Not use changes in a form or other method by which a subcontractor may claim a payment
45 due, or in the contractor’s administrative procedures, as a basis for delaying, withholding or denying

1 a payment that is due.”
2 On page 7, line 38, delete “150 percent of”.
3 On page 8, line 20, delete “permitted under the terms of the subcontract” and insert “in
4 dispute”.
5 On page 9, line 5, delete “permitted under the terms of the subcontract” and insert “in
6 dispute”.
7 In line 45, after “remedies” insert “, as appropriate”.
8 On page 10, delete line 4 and insert:
9 “(B) Revoke the contractor’s prequalification under ORS 279C.430 (4), if the contractor fails to
10 make a payment in accordance with paragraph (a) of this subsection for a second time.
11 “(C) Disqualify the contractor under ORS 279C.440 (2)(d) if the contractor fails to make a pay-
12 ment in accordance with paragraph (a) of this subsection for a third time.
13 “(c) For purposes of this subsection, if a contractor has made payments as provided in sub-
14 section (1) of this section for a period of five years before the date on which the contractor fails to
15 make a payment as provided in subsection (1) of this section, a contracting agency shall treat the
16 contractor’s failure to make the payment as the contractor’s first such failure.”.
17 In line 8, delete “a reasonable time” and insert “10 days”.
18 In line 19, delete “279B.220,” and after “279C.515” insert “, 279C.570”.
19 In line 24, delete “279B.220,” and after “279C.515” insert “, 279C.570”.
20 In line 32, delete “279B.220,” and after “279C.515” insert “, 279C.570”.
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