

# House Bill 3442

Sponsored by Representative FREEMAN; Representatives KENNEMER, THOMPSON, Senator BATES

## 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**.

Requires contracting agency to pay contractor promptly for goods or services contractor provides in connection with public contract. Specifies conditions under which contracting agency must pay interest to contractor on progress payments or overdue payments. Specifies rate of interest for late or overdue payments.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to prompt payments to contractors in connection with public contracts; and declaring an  
3 emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 279B.**

6 **SECTION 2. (1) The State of Oregon requires as a matter of policy that all contracting**  
7 **agencies pay promptly all amounts due a contractor in connection with a public contract.**

8 (2)(a) **A contracting agency shall make monthly progress payments to a contractor as**  
9 **work progresses on a public contract unless the public contract provides otherwise or unless**  
10 **progress payments are not appropriate for the scope or type of work specified in the public**  
11 **contract. Unless the public contract provides otherwise, the contracting agency shall base**  
12 **the amount of each progress payment on the contracting agency's estimate of the amount**  
13 **of work the contractor has completed since the previous payment.**

14 (b) **A progress payment under paragraph (a) of this subsection does not constitute a**  
15 **contracting agency's acceptance or approval of a contractor's work or a waiver of any de-**  
16 **fects in the contractor's work.**

17 (3)(a) **A contracting agency shall pay interest to a contractor on a progress payment due**  
18 **the contractor if the contracting agency has not made the progress payment within 30 days**  
19 **after the contracting agency received an invoice from the contractor or 15 days after the**  
20 **contracting agency approved the payment, whichever date is earlier. The contracting agency**  
21 **shall pay interest on the amount due at a rate that is equal to three times the discount rate**  
22 **on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve**  
23 **district that includes Oregon, but the rate of interest may not exceed 30 percent.**

24 (b) **A contracting agency shall pay interest to a contractor automatically once a payment**  
25 **required in connection with the public contract becomes overdue. A payment is overdue if**  
26 **the contracting agency has not made the payment within 45 days after receiving an invoice**  
27 **from the contractor. The contracting agency, at the time the contracting agency pays the**  
28 **principal, shall document, calculate and pay interest due beginning on the 30th day after the**  
29 **contracting agency received the invoice and ending on the date the contracting agency pays**

**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 the principal. A contracting agency may not require a contractor to petition, invoice, bill or  
 2 wait additional days to receive interest due.

3 (4)(a) If a contractor has submitted an invoice that has a defect or that is otherwise in-  
 4 correct or if the contracting agency and the contractor have a good faith dispute, the con-  
 5 tracting agency shall notify the contractor within 15 days after receiving the invoice or after  
 6 grounds arise for the dispute and shall state in the notice the reason the invoice is defective  
 7 or incorrect or the reason for the dispute. If a contractor corrects an incorrect invoice  
 8 within seven days after the contracting agency gave the contractor notice, the contracting  
 9 agency may not make a payment later than specified in this section unless the contracting  
 10 agency also pays interest.

11 (b) A contracting agency may postpone paying interest if the contracting agency has  
 12 delayed paying the principal because of a dispute between the contracting agency and the  
 13 contractor.

14 (5)(a) After a settlement or judgment in favor of a contractor in a dispute as to the  
 15 compensation a contractor is due for work the contractor performed under the terms of a  
 16 public contract, a contracting agency shall pay the amount due plus interest at a rate that  
 17 is equal to two times the discount rate on 90-day commercial paper in effect at the Federal  
 18 Reserve Bank in the Federal Reserve district that includes Oregon on the date of the  
 19 settlement or judgment, which may not exceed 30 percent. The interest accrues from the  
 20 later of:

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

23 (B) Thirty days after the date on which the contractor presented, in writing or otherwise  
 24 in accordance with applicable provisions of the public contract, a claim for the payment that  
 25 the contracting agency disputed.

26 (b) The contracting agency shall pay interest in addition to and not as part of the  
 27 settlement or judgment.

28 (c) The prevailing party in a formal administrative or judicial action to collect interest  
 29 due under this section is entitled to costs and reasonable attorney fees.

30 (6) Notwithstanding ORS 293.462 (6), a contracting agency shall pay interest in accord-  
 31 ance with this section from appropriations the contracting agency received during the fiscal  
 32 year or biennium, as appropriate, during which the contractor provided the goods or services  
 33 the contracting agency procured under the public contract.

34 **SECTION 3.** Section 2 of this 2013 Act applies to public contracts into which a contract-  
 35 ing agency entered on or after July 1, 2011.

36 **SECTION 4.** (1) Section 2 of this 2013 Act becomes operative 91 days after the effective  
 37 date of this 2013 Act.

38 (2) The Attorney General, the Director of the Oregon Department of Administrative  
 39 Services, the Director of Transportation or a contracting agency that adopts rules under  
 40 ORS 279A.065 may take any action before the operative date specified in subsection (1) of this  
 41 section that is necessary to enable the Attorney General, the director or the contracting  
 42 agency to exercise, on and after the operative date specified in subsection (1) of this section,  
 43 all of the duties, functions and powers conferred on the Attorney General, the director or  
 44 the contracting agency by section 2 of this 2013 Act.

45 **SECTION 5.** This 2013 Act being necessary for the immediate preservation of the public

1 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
2 **on its passage.**

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