

Enrolled
Senate Bill 405

Sponsored by Senator SHIELDS (Pre-session filed.)

CHAPTER

AN ACT

Relating to payment amounts withheld as retainage; creating new provisions; and amending ORS 279C.555, 701.420 and 701.430.

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

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

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

SECTION 2. ORS 701.420 is amended to read:

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

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

(3) When a contractor pays a subcontractor in full, including the amount the contractor withheld as retainage, the owner with whom the contractor has the contract shall pay the contractor, out of the amount that the owner withheld from the contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. The contractor shall notify the owner when the contractor pays a subcontractor in full under this section and the owner shall, within 15 days after receiving the notice, pay the contractor the amount due the contractor under

this subsection. Interest on the amount due the contractor at the rate of one percent per month shall commence 30 days after the owner receives notice of full payment to the subcontractor.

SECTION 3. ORS 701.430 is amended to read:

701.430. [(1) *Except as provided in subsection (2) of this section,*] A contractor or subcontractor may execute and deliver to the owner, contractor or subcontractor before the commencement of construction for which the contractor or subcontractor will be responsible for performing a good and sufficient bond in a sum equal to the contract price for the faithful performance of the contract. The term of the bond [required] **obtained** under this subsection [shall] **must** extend to include the period during which claims of lien or notices of other encumbrances based on the construction performed under the contract may be filed under applicable law. The bond must be approved by the owner, contractor or subcontractor entitled to withhold retainage. A faithful performance bond delivered under this section [shall] **must** include, but not be limited to, provisions to the effect that:

[(a)] (1) The obligations of the contract [shall] **must** be faithfully performed;

[(b)] (2) Payment [shall] **must** promptly be made to all persons supplying labor or materials to the contractor or subcontractor for prosecution of the work provided in the contract;

[(c)] (3) All contributions due the Industrial Accident Fund and the [State] Unemployment Compensation **Trust** Fund from the contractor or subcontractor in connection with the performance of the contract [shall] **must** [promptly] be made **promptly**; and

[(d)] (4) All sums required to be deducted and retained from the wages of employees of the contractor or subcontractor pursuant to the Personal Income Tax Act of 1969, [shall] **must** be paid over to the Department of Revenue.

[(2) *When a contractor or subcontractor does not obtain the bond required under subsection (1) of this section, the owner, contractor or subcontractor may withhold that percentage of the contract price of the work completed as retainage that is agreed to by the parties to the contract. The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due a contractor or subcontractor who was unable to obtain the bond required under subsection (1) of this section. The interest shall commence 10 days after the date on which claims of lien or notices of other encumbrances based on the construction performed under the contract must be properly filed under applicable law. For purposes of this subsection, "final payment due a contractor or subcontractor" means the amount withheld as retainage minus the total dollar amount of liens and other encumbrances resulting from the failure of the contractor or subcontractor to faithfully perform the obligations of the contract and properly filed within the time allowed under applicable law.*]

SECTION 4. The amendments to ORS 279C.555, 701.420 and 701.430 by sections 1 to 3 of this 2013 Act apply to contracts entered into on or after January 1, 2014.

Passed by Senate March 11, 2013

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 3, 2013

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State