

**PROPOSED AMENDMENTS TO
SENATE BILL 405**

1 On page 1 of the printed bill, line 3, delete “279C.845,”.

2 Delete lines 5 through 31 and delete pages 2 through 4 and insert:

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

4 “279C.555. The withholding of retainage by a contractor or subcontractor
5 on public improvement contracts shall be in accordance with ORS 701.420
6 [*and 701.430 except when the charter of the contracting agency contains pro-*
7 *visions requiring retainage by the contracting agency of more than five percent*
8 *of the contract price of the work completed*].

9 **“SECTION 2.** ORS 701.420 is amended to read:

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

16 “(2) The owner, contractor or subcontractor shall pay interest at the rate
17 of one percent per month on the final payment due the contractor or sub-
18 contractor. [*Except as provided in ORS 701.430 (2),*] The interest shall com-
19 mence 30 days after the contractor or subcontractor has completed and the
20 owner has accepted the work under the contract for construction for which
21 the final payment is due. The interest shall run until the date when final
22 payment is tendered to the contractor or subcontractor. When the contrac-

1 tor or subcontractor considers the work that the contractor or subcontractor
2 is contracted to perform to be complete, the contractor or subcontractor
3 shall notify the party to whom the contractor or subcontractor is responsible
4 for performing the construction work under the contract. The party shall,
5 within 15 days after receiving the notice, either accept the work or notify
6 the contractor or subcontractor of work yet to be performed under the con-
7 tract. If the party does not accept the work or does not notify the contractor
8 or subcontractor of work yet to be performed within the time allowed, the
9 interest required under this subsection shall commence 30 days after the end
10 of the 15-day period.

11 “(3) When a contractor pays a subcontractor in full, including the amount
12 the contractor withheld as retainage, the owner with whom the contractor
13 has the contract shall pay the contractor, out of the amount that the owner
14 withheld from the contractor as retainage, a sum equal to the amount of
15 retainage that the contractor paid the subcontractor. The contractor shall
16 notify the owner when the contractor pays a subcontractor in full under this
17 section and the owner shall, within 15 days after receiving the notice, pay
18 the contractor the amount due the contractor under this subsection. Interest
19 on the amount due the contractor at the rate of one percent per month shall
20 commence 30 days after the owner receives notice of full payment to the
21 subcontractor.

22 “**SECTION 3.** ORS 701.430 is amended to read:

23 “701.430. [(1) *Except as provided in subsection (2) of this section,*] A con-
24 tractor or subcontractor may execute and deliver to the owner, contractor
25 or subcontractor before the commencement of construction for which the
26 contractor or subcontractor will be responsible for performing a good and
27 sufficient bond in a sum equal to the contract price for the faithful per-
28 formance of the contract. The term of the bond [*required*] **obtained** under
29 this subsection [*shall*] **must** extend to include the period during which
30 claims of lien or notices of other encumbrances based on the construction

1 performed under the contract may be filed under applicable law. The bond
2 must be approved by the owner, contractor or subcontractor entitled to
3 withhold retainage. A faithful performance bond delivered under this section
4 *[shall]* **must** include, but not be limited to, provisions to the effect that:

5 “[(a)] (1) The obligations of the contract *[shall]* **must** be faithfully per-
6 formed;

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

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

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

18 “[(2) *When a contractor or subcontractor does not obtain the bond required*
19 *under subsection (1) of this section, the owner, contractor or subcontractor may*
20 *withhold that percentage of the contract price of the work completed as*
21 *retainage that is agreed to by the parties to the contract. The owner, contractor*
22 *or subcontractor shall pay interest at the rate of one percent per month on the*
23 *final payment due a contractor or subcontractor who was unable to obtain the*
24 *bond required under subsection (1) of this section. The interest shall commence*
25 *10 days after the date on which claims of lien or notices of other encumbrances*
26 *based on the construction performed under the contract must be properly filed*
27 *under applicable law. For purposes of this subsection, ‘final payment due a*
28 *contractor or subcontractor’ means the amount withheld as retainage minus the*
29 *total dollar amount of liens and other encumbrances resulting from the failure*
30 *of the contractor or subcontractor to faithfully perform the obligations of the*

1 *contract and properly filed within the time allowed under applicable law.]*

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

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