A-Engrossed

House Bill 2415

Ordered by the House April 15
Including House Amendments dated April 15

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Business and Labor for Associated Wall and Ceiling Contractors)

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.

[Prohibits retainage or performance security deduction from portion of progress payment relating to cost of materials or equipment stored at job site.]

[Prohibits retainage if contractor has supplied performance security equivalent to full amount that can be deducted as retainage on original contract price. Limits ability to refuse acceptance of performance security.]

[Requires that retainage be placed in interest-bearing escrow account if contract price exceeds $250,000. Specifies interest accrual period.]

[Prohibits contractor retainage on payments to first-tier subcontractor made after 50 percent of work is completed if work is deemed progressing satisfactorily.]

[Establishes deadlines for payment of retainage after acceptance of work. Establishes requirement for payment of interest if retainage is not timely paid. Provides entitlement to costs and attorney fees to prevailing plaintiff in action for release of retainage amount due.]

[Requires written statement and certification of good faith if payment of retainage is withheld due to incomplete or defective work items or due to filed and documented claims. Limits amounts that may be withheld from release of retainage.]

[Requires that retainage be placed in interest-bearing account if contract price exceeds $500,000. Specifies interest accrual period.]

A BILL FOR AN ACT

Relating to payments on contracts; creating new provisions; and amending ORS 279C.570 and 701.420.

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

SECTION 1. ORS 279C.570 is amended to read:

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

(2) Contracting agencies shall make progress payments on the contract monthly as work progresses on a public improvement contract. Payments shall be based upon estimates of work completed that are approved by the contracting agency. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. The contracting agency shall pay to the contractor interest on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after receipt of the invoice from the contractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier date. The rate of interest charged to the contracting agency on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve dis-

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.

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The contracting agency shall place amounts deducted as retainage into an interest-bearing account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor to which it is due.

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

(4) When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the contracting agency shall so notify the contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by the contractor within seven days of being notified by the contracting agency, may not cause a payment to be made later than specified in this section unless interest is also paid.

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

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

(7) A contracting agency may reserve as retainage from any progress payment on a public improvement contract an amount not to exceed five percent of the payment. As work progresses, a contracting agency may reduce the amount of the retainage and the contracting agency may eliminate retainage on any remaining monthly contract payments after 50 percent of the work under the contract is completed if, in the contracting agency’s opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the contractor, and the application shall include written approval of the contractor’s surety. However, when the contract work is 97.5 percent completed the contracting agency may, at the contracting agency’s discretion and without application by the contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the contractor, the contracting agency shall respond in writing within a reasonable time.

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

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

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

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

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

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. An owner, contractor or subcontractor may withhold 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)(a) 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. 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 al-
lowed, the interest required under this subsection shall commence 30 days after the end of the
15-day period.

(b) If the contract price exceeds $500,000, the owner, contractor or subcontractor shall
place amounts withheld as retainage into an interest-bearing account. Interest on the
retainage amount accrues from the date the payment request is approved until the date the
retainage is paid to the contractor or subcontractor to which it is due.

(3) When a contractor pays a subcontractor in full, including the amount the contractor with-
held 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. The amendments to ORS 279C.570 and 701.420 by sections 1 and 2 of this 2019 Act apply to contracts entered into on or after the effective date of this 2019 Act.