

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. Pre-session 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.]

[Makes offering of written contract form not meeting statutory progress payment or retainage provisions violation subject to fine, not to exceed \$2,000.]

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

A BILL FOR AN ACT

1
2 Relating to payments on contracts; creating new provisions; and amending ORS 279C.570 and
3 701.420.

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

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

6 279C.570. (1) It is the policy of the State of Oregon that all payments due on a public improve-
7 ment contract and owed by a contracting agency shall be paid promptly. No contracting agency is
8 exempt from the provisions of this section.

9 (2) Contracting agencies shall make progress payments on the contract monthly as work
10 progresses on a public improvement contract. Payments shall be based upon estimates of work
11 completed that are approved by the contracting agency. A progress payment is not considered ac-
12 ceptance or approval of any work or waiver of any defects therein. The contracting agency shall
13 pay to the contractor interest on the progress payment, not including retainage, due the contractor.
14 The interest shall commence 30 days after receipt of the invoice from the contractor or 15 days after
15 the payment is approved by the contracting agency, whichever is the earlier date. The rate of in-
16 terest charged to the contracting agency on the amount due shall equal three times the discount
17 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.

1 trict that includes Oregon on the date that is 30 days after receipt of the invoice from the con-
2 tractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier
3 date, but the rate of interest may not exceed 30 percent. **If the contract price exceeds \$500,000,**
4 **the contracting agency shall place amounts deducted as retainage into an interest-bearing**
5 **account. Interest on the retainage amount accrues from the date the payment request is**
6 **approved until the date the retainage is paid to the contractor to which it is due.**

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

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

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

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

27 (7) A contracting agency may reserve as retainage from any progress payment on a public im-
28 provement contract an amount not to exceed five percent of the payment. As work progresses, a
29 contracting agency may reduce the amount of the retainage and the contracting agency may elimi-
30 nate retainage on any remaining monthly contract payments after 50 percent of the work under the
31 contract is completed if, in the contracting agency's opinion, such work is progressing satisfactorily.
32 Elimination or reduction of retainage shall be allowed only upon written application by the con-
33 tractor, and the application shall include written approval of the contractor's surety. However, when
34 the contract work is 97.5 percent completed the contracting agency may, at the contracting agency's
35 discretion and without application by the contractor, reduce the retained amount to 100 percent of
36 the value of the contract work remaining to be done. Upon receipt of a written application by the
37 contractor, the contracting agency shall respond in writing within a reasonable time.

38 (8) The retainage held by a contracting agency shall be included in and paid to the contractor
39 as part of the final payment of the contract price. The contracting agency shall pay to the con-
40 tractor interest at the rate of 1.5 percent per month on the final payment due the contractor, in-
41 terest to commence 30 days after the work under the contract has been completed and accepted and
42 to run until the date when the final payment is tendered to the contractor. The contractor shall
43 notify the contracting agency in writing when the contractor considers the work complete and the
44 contracting agency shall, within 15 days after receiving the written notice, either accept the work
45 or notify the contractor of work yet to be performed on the contract. If the contracting agency does

1 not, within the time allowed, notify the contractor of work yet to be performed to fulfill contractual
2 obligations, the interest provided by this subsection shall commence to run 30 days after the end
3 of the 15-day period.

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

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

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

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

16 **SECTION 2.** ORS 701.420 is amended to read:

17 701.420. (1) Partial payment is allowed and may be made on contracts for construction and home
18 improvement. An owner, contractor or subcontractor may withhold as retainage an amount equal
19 to not more than five percent of the contract price of the work completed. Partial payment allowed
20 under this subsection is not acceptance or approval of some of the work or a waiver of defects in
21 the work.

22 (2)(a) The owner, contractor or subcontractor shall pay interest at the rate of one percent per
23 month on the final payment due the contractor or subcontractor. The interest shall commence 30
24 days after the contractor or subcontractor has completed and the owner has accepted the work
25 under the contract for construction for which the final payment is due. The interest shall run until
26 the date when final payment is tendered to the contractor or subcontractor. When the contractor
27 or subcontractor considers the work that the contractor or subcontractor is contracted to perform
28 to be complete, the contractor or subcontractor shall notify the party to whom the contractor or
29 subcontractor is responsible for performing the construction work under the contract. The party
30 shall, within 15 days after receiving the notice, either accept the work or notify the contractor or
31 subcontractor of work yet to be performed under the contract. If the party does not accept the work
32 or does not notify the contractor or subcontractor of work yet to be performed within the time al-
33 lowed, the interest required under this subsection shall commence 30 days after the end of the
34 15-day period.

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

39 (3) When a contractor pays a subcontractor in full, including the amount the contractor with-
40 held as retainage, the owner with whom the contractor has the contract shall pay the contractor,
41 out of the amount that the owner withheld from the contractor as retainage, a sum equal to the
42 amount of retainage that the contractor paid the subcontractor. The contractor shall notify the
43 owner when the contractor pays a subcontractor in full under this section and the owner shall,
44 within 15 days after receiving the notice, pay the contractor the amount due the contractor under
45 this subsection. Interest on the amount due the contractor at the rate of one percent per month shall

1 commence 30 days after the owner receives notice of full payment to the subcontractor.

2 **SECTION 3. The amendments to ORS 279C.570 and 701.420 by sections 1 and 2 of this 2019**

3 **Act apply to contracts entered into on or after the effective date of this 2019 Act.**

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