

## HOUSE AMENDMENTS TO HOUSE BILL 2415

By COMMITTEE ON BUSINESS AND LABOR

April 15

1 On page 1 of the printed bill, line 2, delete “279C.560,” and after “279C.570” delete the comma  
2 and insert “and”.

3 In line 3, after “701.420” insert a period and delete the rest of the line.

4 Delete lines 5 through 22 and delete pages 2 through 8 and insert:

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 im-  
7 provement contract and owed by a contracting agency shall be paid promptly. No contracting  
8 agency is 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-  
18 trict that includes Oregon on the date that is 30 days after receipt of the invoice from the con-  
19 tractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier  
20 date, but the rate of interest may not exceed 30 percent. **If the contract price exceeds \$500,000,**  
21 **the contracting agency shall place amounts deducted as retainage into an interest-bearing**  
22 **account. Interest on the retainage amount accrues from the date the payment request is**  
23 **approved until the date the retainage is paid to the contractor to which it is due.**

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

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

35 **“(5)** If requested in writing by a first-tier subcontractor, the contractor, within 10 days after

1 receiving the request, shall send to the first-tier subcontractor a copy of that portion of any invoice,  
2 request for payment submitted to the contracting agency or pay document provided by the con-  
3 tracting agency to the contractor specifically related to any labor or materials supplied by the  
4 first-tier subcontractor.

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

9 “(7) A contracting agency may reserve as retainage from any progress payment on a public im-  
10 provement contract an amount not to exceed five percent of the payment. As work progresses, a  
11 contracting agency may reduce the amount of the retainage and the contracting agency may elimi-  
12 nate retainage on any remaining monthly contract payments after 50 percent of the work under the  
13 contract is completed if, in the contracting agency’s opinion, such work is progressing satisfactorily.  
14 Elimination or reduction of retainage shall be allowed only upon written application by the con-  
15 tractor, and the application shall include written approval of the contractor’s surety. However, when  
16 the contract work is 97.5 percent completed the contracting agency may, at the contracting agency’s  
17 discretion and without application by the contractor, reduce the retained amount to 100 percent of  
18 the value of the contract work remaining to be done. Upon receipt of a written application by the  
19 contractor, the contracting agency shall respond in writing within a reasonable time.

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

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

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

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

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

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

44 “701.420. (1) Partial payment is allowed and may be made on contracts for construction and  
45 home improvement. An owner, contractor or subcontractor may withhold as retainage an amount

1 equal to not more than five percent of the contract price of the work completed. Partial payment  
2 allowed under this subsection is not acceptance or approval of some of the work or a waiver of  
3 defects in the work.

4 “(2)(a) The owner, contractor or subcontractor shall pay interest at the rate of one percent per  
5 month on the final payment due the contractor or subcontractor. The interest shall commence 30  
6 days after the contractor or subcontractor has completed and the owner has accepted the work  
7 under the contract for construction for which the final payment is due. The interest shall run until  
8 the date when final payment is tendered to the contractor or subcontractor. When the contractor  
9 or subcontractor considers the work that the contractor or subcontractor is contracted to perform  
10 to be complete, the contractor or subcontractor shall notify the party to whom the contractor or  
11 subcontractor is responsible for performing the construction work under the contract. The party  
12 shall, within 15 days after receiving the notice, either accept the work or notify the contractor or  
13 subcontractor of work yet to be performed under the contract. If the party does not accept the work  
14 or does not notify the contractor or subcontractor of work yet to be performed within the time al-  
15 lowed, the interest required under this subsection shall commence 30 days after the end of the  
16 15-day period.

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

21 “(3) When a contractor pays a subcontractor in full, including the amount the contractor with-  
22 held as retainage, the owner with whom the contractor has the contract shall pay the contractor,  
23 out of the amount that the owner withheld from the contractor as retainage, a sum equal to the  
24 amount of retainage that the contractor paid the subcontractor. The contractor shall notify the  
25 owner when the contractor pays a subcontractor in full under this section and the owner shall,  
26 within 15 days after receiving the notice, pay the contractor the amount due the contractor under  
27 this subsection. Interest on the amount due the contractor at the rate of one percent per month shall  
28 commence 30 days after the owner receives notice of full payment to the subcontractor.

29 “**SECTION 3. The amendments to ORS 279C.570 and 701.420 by sections 1 and 2 of this**  
30 **2019 Act apply to contracts entered into on or after the effective date of this 2019 Act.**”

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