

HB 2415-4
(LC 2760)
4/5/19 (CDT/ps)

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR at the request of Representative
Barker

**PROPOSED AMENDMENTS TO
HOUSE BILL 2415**

1 On page 1 of the printed bill, line 2, delete “279C.560,” and after
2 “279C.570” delete the comma 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
7 on a public improvement contract and owed by a contracting agency shall
8 be paid promptly. No contracting agency is exempt from the provisions of
9 this section.

10 “(2) Contracting agencies shall make progress payments on the contract
11 monthly as work progresses on a public improvement contract. Payments
12 shall be based upon estimates of work completed that are approved by the
13 contracting agency. A progress payment is not considered acceptance or ap-
14 proval of any work or waiver of any defects therein. The contracting agency
15 shall pay to the contractor interest on the progress payment, not including
16 retainage, due the contractor. The interest shall commence 30 days after re-
17 ceipt of the invoice from the contractor or 15 days after the payment is ap-
18 proved by the contracting agency, whichever is the earlier date. The rate of
19 interest charged to the contracting agency on the amount due shall equal
20 three times the discount rate on 90-day commercial paper in effect at the
21 Federal Reserve Bank in the Federal Reserve district that includes Oregon

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

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

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

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

29 “(6) Payment of interest may be postponed when payment on the principal
30 is delayed because of disagreement between the contracting agency and the

1 contractor. Whenever a contractor brings formal administrative or judicial
2 action to collect interest due under this section, the prevailing party is en-
3 titled to costs and reasonable attorney fees.

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

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

1 interest provided by this subsection shall commence to run 30 days after the
2 end of the 15-day period.

3 “(9)(a) The contracting agency shall pay, upon settlement or judgment in
4 favor of the contractor regarding any dispute as to the compensation due a
5 contractor for work performed under the terms of a public improvement
6 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
8 the Federal Reserve Bank in the Federal Reserve district that includes
9 Oregon on the date of the settlement or judgment, and accruing from the
10 later of:

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

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

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

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

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

25 “(2)(a) The owner, contractor or subcontractor shall pay interest at the
26 rate of one percent per month on the final payment due the contractor or
27 subcontractor. The interest shall commence 30 days after the contractor or
28 subcontractor has completed and the owner has accepted the work under the
29 contract for construction for which the final payment is due. The interest
30 shall run until the date when final payment is tendered to the contractor or

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

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

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

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

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