

House Bill 4010

Sponsored by Representative SMITH G (Presession filed.)

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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Tells state agencies that want more work on a construction project than the contract calls for to issue a change order for the work by a certain date or to pay interest if the agency does not. Makes contractors do the same for subcontractors and owners do the same in private contracts. (Flesch Readability Score: 61.6).

Requires contracting agencies that procure public improvement contracts or contracts for public works and require additional work outside the scope set forth in the public improvement contract or contract for public works to issue change orders for the additional work within a specific time or to pay interest for failing to do so. Requires similar duties from contractors to subcontractors and from owners to contractors in private construction contracts.

Takes effect on the 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to required payments for changes to the scope of work on construction contracts; creating new provisions; amending ORS 279C.570 and 701.630; and prescribing an effective date.

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

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

279C.570. (1) The policy of the State of Oregon is that all payments due on a public improvement contract and owed by a contracting agency must 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]* **must** 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]* **in the work**. The contracting agency shall pay to the contractor interest on the progress payment, not including retainage, due the contractor. *The interest shall commence* **beginning** 30 days after *[receipt of the]* **receiving an** invoice from the contractor or 15 days after *[the payment is approved by]* the contracting agency **approves the payment**, whichever is the earlier date. The rate of interest charged to the contracting agency on the amount due *[shall]* **must** equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from the contractor or 15 days after the **contracting agency approves the** payment *[is approved by the contracting agency]*, whichever is the earlier date, but the rate of interest may not exceed 30 percent.

(3) Interest *[shall]* **must** be paid automatically when payments become overdue. The contracting agency shall document, calculate and pay any interest due when **making a** payment *[is made]* on the principal. Interest payments *[shall]* **must** 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.

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

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

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

16 (7) A contracting agency may reserve as retainage from any progress payment on a public im-
17 provement contract an amount not to exceed five percent of the payment. As work progresses, a
18 contracting agency may reduce the amount of the retainage and the contracting agency may elimi-
19 nate retainage on any remaining monthly contract payments after 50 percent of the work under the
20 contract is completed if, in the contracting agency's opinion, such work is progressing satisfactorily.
21 Elimination or reduction of retainage *[shall]* **may** be allowed only upon written application by the
22 contractor, and the application *[shall]* **must** include written approval of the contractor's surety.
23 However, when the contract work is 97.5 percent completed the contracting agency may, at the
24 contracting agency's discretion and without application by the contractor, reduce the retained
25 amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a
26 written application by the contractor, the contracting agency shall respond in writing within a
27 reasonable time.

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

39 **(9)(a) A contracting agency that requires additional work from a contractor or subcon-**
40 **tractor that is outside the scope set forth in a public improvement contract or contract for**
41 **public works shall issue a change order to the public improvement contract or contract for**
42 **public works. The contracting agency shall issue the change order not later than 30 days**
43 **after the contractor or subcontractor requests the change order and the contracting agency**
44 **accepts the additional work that the contractor or subcontractor completes. A contracting**
45 **agency shall pay interest at the rate specified in subsection (2) of this section on the unpaid**

dollar amount of the additional work the contracting agency has accepted if the contracting agency fails to issue a change order as provided in this paragraph. The contracting agency is liable for the interest until the date on which the contracting agency issues the change order.

(b) Not later than 10 days after receiving a change order from a contracting agency, a contractor shall issue a change order for the full amount due to any subcontractor that must perform additional work on the public improvement or public works that is outside the scope set forth in the subcontract and that the contracting agency has accepted. A contractor shall pay interest at a rate of one percent per month to an affected subcontractor if the contractor fails to issue a change order to the subcontractor as provided in this paragraph. The contractor is liable for the interest until the date on which the contractor issues the change order to the affected subcontractor.

(c) If a subcontractor requests a change order from a contractor or a first-tier subcontractor within 30 days after completing additional work that a contracting agency has accepted, the contractor or first-tier subcontractor shall request a change order from the contracting agency as provided in paragraph (a) of this subsection. If the contractor or first-tier subcontractor requests the change order from the contracting agency, the contractor or first-tier subcontractor is not liable to pay interest on the unpaid amount due to the subcontractor for the additional work if the contracting agency does not issue the change order as provided in paragraph (a) of this subsection.

(d) This subsection does not provide to a contractor or subcontractor any rights against a person that is not a party to a written contract with the contractor or subcontractor.

[(9)(a)] (10)(a) [The] A 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[.]; or

(C) Thirty days after the date on which the contracting agency must issue a change order as provided in subsection (9) of this section.

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

SECTION 2. ORS 701.630 is amended to read:

701.630. (1) An original contractor, subcontractor or material supplier that performs in accordance with a construction contract is entitled to **prompt** payment from the party with whom the original contractor, subcontractor or material supplier contracts.

(2)(a) If a subcontractor has performed in accordance with a construction contract, and the original contractor receives payment from the owner for work performed by the subcontractor, the original contractor shall pay the subcontractor for that work no later than seven days after the original contractor receives the payment. If a material supplier has performed in accordance with a construction contract, and the original contractor receives payment from the owner for materials

or products provided by the material supplier, the original contractor shall pay the material supplier for those materials and products no later than seven days after the original contractor receives the payment. An original subcontractor that receives payment under this subsection for work provided to the original subcontractor by another subcontractor, or for materials or products provided to the original subcontractor, shall pay the other subcontractor or material supplier for the work, materials or products no later than seven days after the original subcontractor receives the payment.

(b) Payment is not required under this subsection unless a subcontractor or material supplier provides to the original contractor or subcontractor a billing or invoice for the work performed or materials or products supplied in compliance with the terms of the contract between the parties. Each subcontractor or material supplier must provide an appropriate waiver of any lien for labor, equipment, services, materials or products in accordance with subcontract or purchase order terms and conditions. The original contractor or subcontractor may require that such waivers of lien be notarized.

(3) Any failure to reasonably account for the application or use of payments, as proven in a legal proceeding authorized under the terms of the construction contract, may constitute grounds for disciplinary action by the Construction Contractors Board under ORS 701.098.

(4) An original contractor that submits a billing or estimate to an owner, or an original subcontractor that submits a billing or estimate to the original contractor, may omit from the billing or estimate amounts to be withheld from payment to a subcontractor or material supplier because of:

- (a) Unsatisfactory work progress;
- (b) Defective construction work, materials or products not remedied;
- (c) Disputed work, materials or products, except that the withheld amount may not exceed 150 percent of the amount in dispute;
- (d) Failure to comply with other material provisions of the construction contract;
- (e) A third party claim being filed or reasonable evidence that a third party claim will be filed;
- (f) Failure of the subcontractor to make timely payments to subcontractors and material suppliers for labor, equipment, materials and products;
- (g) Damage to an original contractor, subcontractor or material supplier;
- (h) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or
- (i) Other items as allowed under the subcontract or purchase order terms and conditions.

(5) An original contractor or original subcontractor may also omit from a billing or estimate a reasonable amount for retainage, except that the amount omitted may not exceed the actual percentage allowed by the construction contract, subcontract or purchase order. As used in this subsection, "retainage" has the meaning given that term in ORS 701.410.

(6) If a progress or final payment to a subcontractor or material supplier is delayed by more than seven days after receipt of a progress or final payment by an original contractor or subcontractor, the original contractor or subcontractor shall pay *[its]* **the** subcontractor or material supplier interest beginning on the eighth day, except during periods of time during which payment is withheld pursuant to subsection (4) or (5) of this section, at the rate of one and one-half percent a month or a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

(7)(a) An owner that requires additional work from a contractor or subcontractor that is outside the scope set forth in a construction contract shall issue a change order to the construction contract not later than 30 days after the contractor or subcontractor requests

1 the change order and the owner accepts the additional work that the contractor or subcon-
 2 tractor completes. An owner shall pay interest at the rate specified in subsection (6) of this
 3 section on the unpaid dollar amount of the additional work the owner has accepted if the
 4 owner fails to issue a change order as provided in this paragraph. The owner is liable for the
 5 interest until the date on which the owner issues the change order.

6 (b) Not later than 10 days after receiving a change order from an owner, a contractor
 7 shall issue a change order for the full amount due to any subcontractor that must perform
 8 additional work that is outside the scope set forth in the subcontract and that the owner has
 9 accepted. A contractor shall pay interest at the rate specified in subsection (6) of this section
 10 to an affected subcontractor if the contractor fails to issue a change order to the subcon-
 11 tractor as provided in this paragraph. The contractor is liable for the interest until the date
 12 on which the contractor issues the change order to the affected subcontractor.

13 (c) If a subcontractor requests a change order from a contractor or a first-tier subcon-
 14 tractor within 30 days after completing additional work that an owner has accepted, the
 15 contractor or first-tier subcontractor shall request a change order from the owner as pro-
 16 vided in paragraph (a) of this subsection. If the contractor or first-tier subcontractor re-
 17 quests the change order from the owner, the contractor or first-tier subcontractor is not
 18 liable to pay interest on the unpaid amount due to the subcontractor for the additional work
 19 if the owner does not issue the change order as provided in paragraph (a) of this subsection.

20 (d) This subsection does not provide to a contractor or subcontractor any rights against
 21 a person that is not a party to a written contract with the contractor or subcontractor.

22 [(7)] (8) In any action, claim or arbitration brought to collect interest under this section, the
 23 prevailing party *[shall]* **must** be awarded costs and reasonable attorney fees.

24 **SECTION 3.** (1) The amendments to ORS 279C.570 by section 1 of this 2026 Act apply to
 25 procurements that a contracting agency advertises or otherwise solicits or, if the contract-
 26 ing agency does not advertise or solicit the procurement, to a contract for public works or
 27 a public improvement contract into which the contracting agency enters on or after the op-
 28 erative date specified in section 4 of this 2026 Act.

29 (2) The amendments to ORS 701.630 by section 2 of this 2026 Act apply to construction
 30 contracts that parties execute on or after the effective date of this 2026 Act.

31 **SECTION 4.** (1) The amendments to ORS 279C.570 by section 1 of this 2026 Act become
 32 operative on January 1, 2027.

33 (2) The Attorney General, the Director of the Department of Administrative Services, the
 34 Director of Transportation and a contracting agency that adopts rules under ORS 279A.065
 35 or 279A.070 may adopt rules and take any other action before the operative date specified in
 36 subsection (1) of this section that is necessary to enable the Attorney General, the director
 37 or the contracting agency to undertake and exercise all of the duties, functions and powers
 38 conferred on the Attorney General, the director or the contracting agency by the amend-
 39 ments to ORS 279C.570 by section 1 of this 2026 Act.

40 **SECTION 5.** This 2026 Act takes effect on the 91st day after the date on which the 2026
 41 regular session of the Eighty-third Legislative Assembly adjourns sine die.
 42