



STATE OF OREGON
Legislative Counsel Committee

July 1, 2010

To: Susan Grabe, Oregon State Bar
From: Charles Daniel Taylor, Senior Deputy Legislative Counsel
Subject: Legislative concept #7, prompt pay for construction

Enclosed is a draft of the Bar's concept regarding revision of the statutes dealing with prompt pay for residential construction. As you suggested, I contacted Mr. Gary Christensen for further information concerning this request. As a result of Mr. Christensen's comments, I made changes to the proposed language.

In addition to the statutory changes that you requested, I rearranged several parts of the statutes in order to improve the flow of the material. Since these are form and style changes, I did not bill you for drafting them. ORS 701.625 (9) has been relocated to be ORS 701.625 (4). ORS 701.625 (5) has been relocated to be ORS 701.625 (9). ORS 701.625 (10) has been relocated to be a part of ORS 701.625 (8) and has been modified as described more fully below. ORS 701.625 (13) has been relocated to be ORS 701.625 (14). I have also added ORS 701.630 to the draft and have made changes to that statute. ORS 701.630 (2) has been separated into two paragraphs. ORS 701.630 (4)(i) has been relocated to be ORS 701.630 (5).

While making the form and style changes, I noticed several substantive problems that I have attempted to address:

- 1) There is an inconsistency in ORS 701.625 regarding whether the certification period begins at the time a billing or estimate is submitted to the owner or at the time the owner receives the billing or estimate. Since the meaning of "submitted" is ambiguous, I have made receipt of the billing or estimate the triggering event for the certification period.
- 2) The existing ORS 701.625 (7) provides that the owner and original contractor may agree to modify the certification period and the payment period. The subsection then says that if the original contractor does not consent to the change in writing, the contractor will continue to be paid under the original agreement. The latter seems an unnecessary statement. In addition, ORS 701.625 (7) arguably conflicts with the existing ORS 701.625 (10), which states that a construction contract may not alter the right of a contractor to receive prompt and timely payments as required by the section. I have attempted to harmonize and clarify these provisions in the new ORS 701.625 (8). Please review that subsection carefully to make sure that you approve of the new text.
- 3) In the new ORS 701.630 (2)(b), I have attempted to harmonize the language with the terminology used in the lien laws. I have made similar modifications to the language in ORS 701.635 (6). The remaining difference between these statutes and the lien law

terminology is that ORS 701.630 and 701.635, as is true throughout the prompt pay statutes, refer to both materials and products rather than just materials. This reflects the ORS 701.620 definition of "material supplier," although I am uncertain why it is necessary to distinguish products from materials. You may wish to review the need for maintaining that distinction.

I realize that the changes I have made are quite extensive and may be difficult to sort out. If it would be helpful, I can arrange to send you an electronic version of the draft that shows only the resulting text. If you would find that helpful, or if you wish to discuss any parts of the draft, please call me at (503) 986-1243.

Encl.