

House Bill 2658

Sponsored by COMMITTEE ON CONSUMER PROTECTION

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**.

Establishes Oregon Construction Defect Limited Assistance Fund. Provides for capped payouts from fund for unpaid judgments, arbitration awards or Construction Contractors Board final orders arising out of residential dwelling construction defects. Provides for board to administer fund. Continuously appropriates fund moneys to board. Allows annual assessment on residential construction contractors, not to exceed \$40, to replenish fund. Provides for moneys from civil penalties assessed by board to be deposited to fund.

A BILL FOR AN ACT

1
2 Relating to Oregon Construction Defect Limited Assistance Fund; creating new provisions; amending
3 ORS 701.255; and appropriating money.

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

5 **SECTION 1. The Oregon Construction Defect Limited Assistance Fund is established**
6 **within the State Treasury, separate and distinct from the General Fund. Interest earned by**
7 **the Oregon Construction Defect Limited Assistance Fund shall be credited to the fund.**
8 **Moneys in the fund are continuously appropriated to the Construction Contractors Board for**
9 **use as provided under section 3 of this 2007 Act.**

10 **SECTION 2. As used in this section and section 3 of this 2007 Act:**

11 (1) **"Construction defect" means a deficiency, inadequacy or insufficiency arising out of**
12 **the construction of a residential dwelling unit:**

13 (a) **That substantially impairs the ordinary use, market value or safety of the dwelling**
14 **unit; or**

15 (b) **That results in a dwelling unit not meeting, at the time of substantial completion, a**
16 **specification of the state building code or of a construction contract for the dwelling unit.**

17 (2) **"Multiunit building" means a building having three or more dwelling units.**

18 (3) **"Residential dwelling unit" means:**

19 (a) **A site-built, single-family residence or duplex; or**

20 (b) **A dwelling unit in a multiunit building if the dwelling unit is subject to a legally re-**
21 **corded bylaw, declaration, covenant or similar document restricting or prohibiting the rent-**
22 **ing out of the dwelling unit.**

23 (4) **"Residential dwelling unit" does not mean:**

24 (a) **A manufactured structure as defined in ORS 446.003 or floating home as defined in**
25 **ORS 830.700; or**

26 (b) **Any common elements of a multiunit building.**

27 **SECTION 3. (1) The Construction Contractors Board may pay moneys from the Oregon**
28 **Construction Defect Limited Assistance Fund to a person, or to the legal heir or successor**
29 **of the person, if:**

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 (a) For damage to the residential dwelling unit of the person arising out of a construction
2 defect the person has obtained:

3 (A) A judgment by a court of competent jurisdiction in this state;

4 (B) An arbitration award; or

5 (C) An order issued by the board;

6 (b) The damages awarded under the judgment, arbitration award or board order remain
7 unpaid in whole or in part on the date of payment from the fund; and

8 (c) The judgment, arbitration award or board order has, by operation of law or on appeal,
9 been final for 30 or more days on the date of payment from the fund.

10 (2) A person who is eligible under subsection (1) of this section may receive only one
11 payment under this section for the damages awarded under all judgments, arbitration awards
12 and board orders relating to a single construction project on the residential dwelling unit.
13 The board shall make payments under this section annually on a date established by the
14 board. A payment from the fund may be made only to persons who became eligible under
15 subsection (1) of this section during the most recent annual period adopted by the board.

16 (3) Except as provided in subsection (4) of this section, the maximum payment that the
17 board may make to a person under this section is the lesser of:

18 (a) \$20,000; or

19 (b) The amount of damages awarded to the person under all judgments, arbitration
20 awards and board orders relating to a single residential construction project, less any
21 amounts received by the person from or on behalf of the contractor.

22 (4) Notwithstanding subsection (3) of this section, the total of maximum payments under
23 subsection (3) of this section for all judgments, arbitration awards and board orders against
24 a single contractor during an annual period may not exceed \$100,000. The board shall divide
25 the \$100,000 limit among the persons claiming against the contractor, assigning each of the
26 persons a maximum payment amount as determined by board rules. A maximum payment
27 amount assigned to a person under the rules may not exceed the limits established in sub-
28 section (3) of this section. The board may adopt rules to treat contractors having identical
29 ownership, officers or management as a single contractor for purposes of this section.

30 (5) The board shall annually determine the percentage of payment to be made to persons
31 under this section. The board shall determine the percentage by dividing the total amount
32 available for payment under the rules described in subsection (6) of this section by the total
33 amount of the maximum payments for which persons are eligible under subsection (3) or (4)
34 of this section. Each person sharing in an annual payment shall receive an amount equal
35 to the percentage determined by the board under this subsection multiplied by the maximum
36 payment for which the person is eligible.

37 (6) The board shall adopt rules for determining the total amount available for the pay-
38 ment of claims under this section. The board may limit the amount of the fund balance
39 available for payment during a year in order to reduce annual variations in the percentage
40 of payment. All moneys not retained as a reserve shall be available for the next annual
41 payment under this section.

42 **SECTION 4.** (1) If the Construction Contractors Board makes a payment of moneys from
43 the Oregon Construction Defect Limited Assistance Fund under section 3 of this 2007 Act in
44 full or partial satisfaction of damages owed by a contractor, the board may seek to recover
45 the payment amount from the contractor. In seeking repayment under this section, the

1 board may exercise any right of recovery that would be available to the person receiving
2 payment from the fund.

3 (2) The recovery right of the board under this section is subordinate to any right of the
4 person receiving payment from the fund to recover damages that were awarded under a
5 judgment, arbitration award or board order and remain unpaid.

6 (3) A person receiving a payment under section 3 of this 2007 Act shall fully cooperate
7 and assist the board in exercising any rights of the board to recover the payment amount
8 from the contractor. The person may not take any action to prejudice the recovery rights
9 of the board.

10 (4) An amount paid by the board under section 3 of this 2007 Act and not recovered by
11 the board from the contractor is a construction debt as defined in ORS 701.005.

12 **SECTION 5.** If an annual payment of moneys from the Oregon Construction Defect
13 Limited Assistance Fund under section 3 of this 2007 Act causes the balance of the fund
14 immediately after the payout to be less than \$250,000, the Construction Contractors Board
15 shall levy an assessment on each contractor licensed by the board that performs work on
16 residential structures. The board may impose different assessment amounts for different
17 classes of licensee. An assessment imposed on a licensee during an annual period may not
18 be more than \$40. The total of all assessments levied in an annual period may not exceed the
19 difference between \$250,000 and the fund balance immediately after the most recent annual
20 payout from the fund.

21 **SECTION 6.** ORS 701.255 is amended to read:

22 701.255. (1) The Construction Contractors Board may retain [20] 10 percent annually from the
23 funds collected under ORS 701.992. The amount retained under this [section shall be] subsection is
24 continuously appropriated to the board for the board's costs of collection of civil penalties imposed
25 by order of the board.

26 (2) All moneys collected by the board under ORS 701.992 and not retained by the board
27 under subsection (1) of this section shall be deposited for credit to the Oregon Construction
28 Defect Limited Assistance Fund established under section 1 of this 2007 Act.

29 **SECTION 7.** Section 3 of this 2007 Act applies to:

30 (1) Judgments in actions filed on or after the effective date of this 2007 Act;

31 (2) Arbitration awards, other than arbitration awards for which the Construction Con-
32 tractors Board issues a final order, arising out of a dispute submitted to an arbitrator on
33 or after the effective date of this 2007 Act; and

34 (3) Board orders obtained by persons who file claims under ORS 701.140 (1) or (2) on or
35 after the effective date of this 2007 Act.

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