

HOUSE AMENDMENTS TO HOUSE BILL 2349

By COMMITTEE ON JUDICIARY

April 17

1 On page 1 of the printed bill, line 3, delete “87.081, 87.086” and insert “87.083”.

2 Delete lines 5 through 30 and delete pages 2 and 3 and insert:

3 “**SECTION 1.** ORS 87.076 is amended to read:

4 “87.076. (1) The owner of an improvement or land against which a lien perfected under ORS
5 87.035 is claimed, or [*any other*] **an** interested person, may file with the recording officer of the
6 county in whose office the claim of lien is filed a bond executed by a corporation authorized to issue
7 surety bonds in the State of Oregon to the effect that the principal or principals on the bond shall
8 pay the amount of the claim and all costs and attorney fees that are awarded against the improve-
9 ment or land on account of the lien. The bond shall be in an amount not less than 150 percent of
10 the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

11 “(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, the owner of an
12 improvement or land against which a lien perfected under ORS 87.035 is claimed, or [*any other*] **an**
13 interested person, may deposit with the treasurer of the county in which the claim of lien is filed
14 a sum of money or [*its*] **the** equivalent **of money** equal in value to 150 percent of the amount
15 claimed under the lien, or in the amount of \$1,000, whichever is greater.

16 “(b) [*The court in which any proceeding to foreclose the lien may be brought may, upon notice and*
17 *upon motion by a person who makes a deposit under paragraph (a) of this subsection, order the money*
18 *invested in such manner as the court may direct.*] A person who makes a deposit under paragraph (a)
19 of this subsection [*shall be*] **is** entitled to any **investment** income. [*from the investments and the*
20 *treasurer of the county shall pay the income when received to the depositor without order.*] **The**
21 **treasurer shall pay the investment income to the person who makes the deposit at the time**
22 **the treasurer, in accordance with ORS 87.083, distributes the money deposited under this**
23 **subsection. The person who makes the deposit bears the risk for a loss that results from an**
24 **investment of the money deposited.**

25 “(3) A **person may file a** bond or **deposit** money [*may be filed or deposited*] under subsection
26 (1) or (2) of this section at any time after the [*filing of the*] claim of lien **is filed** under ORS 87.035.

27 “(4)(a) [*Any*] **A** person entitled to post a bond under subsection (1) of this section or a cash de-
28 posit under subsection (2) of this section may deliver pursuant to ORS 87.018 a written demand **to**
29 **the lien claimant** that a lien perfected under ORS 87.035 be released and a notice that if [*it*] **the**
30 **lien** is not released the [*party making the demand may be entitled to*] **person may** recover the actual
31 costs **the person** incurred [*by the party making the demand*] in complying with this section[,] **and**
32 ORS 87.078 and 87.081 or the sum of \$500, whichever is greater. If the lien is not released within
33 10 days after [*delivery of*] the demand and notice **is delivered** and the lien claimant or an assignor
34 of the lien claimant does not bring a suit to foreclose the lien within the time provided in ORS
35 87.055, and if the person [*making*] **who made** the demand has complied with this section[,] **and** ORS

1 87.078 and 87.081, then the *[person failing]* **lien claimant or assignor of the lien claimant who**
2 **fails** to release *[and]* **or** foreclose the lien *[shall be]* **is** liable to the person *[making the demand]* for
3 the actual costs *[incurred by]* the person *[making the demand]* **incurred** in complying with this
4 section[,] **and** ORS 87.078 and 87.081 or the sum of \$500, whichever is greater, in addition to any
5 other remedy provided by law or equity.

6 “(b) In *[any]* **an** action to recover damages under this subsection in which the plaintiff prevails,
7 *[there shall be allowed to the plaintiff,]* **the court**, at trial and on appeal, **shall allow and fix** a
8 reasonable amount for attorney fees *[to be fixed by the court]* for prosecution of the action, if the
9 court finds that a written demand for payment of the claim was made on the defendant not less than
10 20 days before commencement of the action. However, **the court may not allow** attorney fees *[shall*
11 *not be allowed]* to the plaintiff, but shall *[be allowed]* **allow attorney fees** to the defendant, if the
12 court finds that the defendant tendered to the plaintiff prior to commencement of the action an
13 amount not less than the damages awarded to the plaintiff.

14 “(c) If a lien claimant or an assignor of the lien claimant is served with a demand under para-
15 graph (a) of this subsection and is a prevailing party in the suit to foreclose the lien, then in addi-
16 tion to *[such]* other costs and attorney fees to which the lien claimant or the assignor of the lien
17 claimant is entitled, the court shall allow the actual costs incurred in addressing the demand or the
18 sum of \$500, whichever is greater.

19 “**SECTION 2.** ORS 87.083 is amended to read:

20 “87.083. (1) *[Any]* **A** suit to foreclose a lien pursuant to ORS 87.060 that is commenced or
21 pending after *[the filing of]* a bond **is filed** or *[deposit of]* money **deposited** under ORS 87.076 shall
22 proceed as if no filing or deposit *[had been]* **was** made except that the lien shall attach to the bond
23 or money upon the filing or deposit and the service of notice thereof upon the lien claimant. The
24 property described in the claim of lien *[shall]* **is** thereafter *[be]* entirely free of the lien and *[shall*
25 *in no way be]* **is not** involved in subsequent proceedings.

26 “**(2) The county or an officer or employee of the county may not be named or otherwise**
27 **made a party to a suit described in subsection (1) of this section.**

28 “[2] **(3)** When a bond is filed or money is deposited, if, in a suit to enforce the lien for which
29 the filing or deposit is made, the court allows the lien, the lien *[shall]* **must** be satisfied out of the
30 bond or money. The court shall include as part of *[its]* **the court’s** judgment an order *[for the return*
31 *to the person who deposited the money of any amount remaining after the lien is satisfied.]* **that**
32 **specifies the amount the treasurer must release to the judgment creditor and the amount**
33 **of the remaining balance that the treasurer must release to the person who deposited the**
34 **money.**

35 “[3] **(4)** When a bond is filed or money is deposited, if, in a suit to enforce the lien for which
36 the filing or deposit is made, the court disallows the lien, the court shall include as part of *[its]* **the**
37 **court’s** judgment an order *[for the]* **to** return *[of]* the bond or money to the person who filed the
38 bond or deposited the money.

39 “**(5) Notwithstanding an order from the court under subsection (3) or (4) of this section**
40 **or an order or notice under ORS 87.088, if the county treasurer is not certain about how to**
41 **distribute money deposited under ORS 87.076, the treasurer shall notify the lien claimant and**
42 **the person who deposited the money of how the treasurer intends to distribute the money.**
43 **If within 10 days after the date of the treasurer’s notice a party to the suit to foreclose the**
44 **lien objects to the notice, the treasurer may:**

45 “(a) **Hold the money until the court or a stipulation of the parties provides further di-**

1 rection; or

2 **“(b) Commence an interpleader proceeding under ORCP 31.**

3 **“SECTION 3.** ORS 87.088 is amended to read:

4 “87.088. The county recording officer shall record a written release of the lien or the county
5 treasurer in whose office money is deposited under ORS 87.076 shall return the money to the person
6 who made the deposit [*when*] **if:**

7 **“(1) The person who filed the bond or deposited the money under ORS 87.076 notifies the**
8 **lien claimant and the treasurer in writing and by certified mail that a suit to foreclose the lien**
9 **[is] was not commenced within the time specified by ORS 87.055[;]. The notice shall provide that**
10 **the lien claimant has 15 calendar days in which to object to the release of the lien and the**
11 **return of the money and to provide documentation that demonstrates that a suit was timely**
12 **commenced or that the time for commencement has not expired. If the treasurer receives**
13 **an objection, the treasurer may decide how to distribute the money or may commence an**
14 **interpleader proceeding under ORCP 31.**

15 **“(2) The person who [*recorded*] filed the bond or deposited the money presents a certified copy**
16 **of a court’s order for the release of the bond or all or some of the money to [*that*] the person[;**
17 **or].**

18 **“(3) The person who [*recorded*] filed the bond or deposited the money presents a written release**
19 **of lien signed by the lien claimant.**

20 **“SECTION 4.** Section 5 of this 2009 Act is added to and made a part of ORS 87.075 to
21 **87.093.**

22 **“SECTION 5.** The provisions of ORS 87.076, 87.083 and 87.088 do not create a cause of
23 **action and may not be asserted as a basis for a per se negligence action.**

24 **“SECTION 6.** Section 5 of this 2009 Act and the amendments to ORS 87.076, 87.083 and
25 **87.088 by sections 1 to 3 of this 2009 Act apply to a surety bond or money that is filed or**
26 **deposited in connection with a demand for a release of a perfected lien on or after the ef-**
27 **fective date of this 2009 Act.”.**

28
