

House Bill 2349

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary)

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**.

Permits owner of improvement or land that seeks release of lien perfected against improvement or land to file surety bond or deposit money with escrow agent instead of county recorder or county treasurer.

A BILL FOR AN ACT

1
2 Relating to value given for release of lien; creating new provisions; and amending ORS 87.076,
3 87.081, 87.086 and 87.088.

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

5 **SECTION 1.** ORS 87.076 is amended to read:

6 87.076. (1) The owner of an improvement or land against which a lien perfected under ORS
7 87.035 is claimed, or [*any other*] **an** interested person, may file with [*the recording officer of the*
8 *county in whose office the claim of lien is filed*] **a person licensed as an escrow agent under ORS**
9 **696.511** a bond executed by a corporation authorized to issue surety bonds in the State of Oregon
10 to the effect that the principal or principals on the bond shall pay the amount of the claim and all
11 costs and attorney fees that are awarded against the improvement or land on account of the lien.
12 The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, or
13 in the amount of \$1,000, whichever is greater.

14 (2)(a) In lieu of the surety bond provided for in subsection (1) of this section, the owner of an
15 improvement or land against which a lien perfected under ORS 87.035 is claimed, or [*any other*] **an**
16 interested person, may deposit with [*the treasurer of the county in which the claim of lien is filed*] **a**
17 **person licensed as an escrow agent under ORS 696.511** a sum of money or [*its*] **the** equivalent
18 **of money** equal in value to 150 percent of the amount claimed under the lien, or in the amount of
19 \$1,000, whichever is greater.

20 (b) The court in which any proceeding to foreclose the lien may be brought may, upon notice
21 and upon motion by a person who makes a deposit under paragraph (a) of this subsection, order the
22 money invested in such manner as the court may direct. A person who makes a deposit under par-
23 agraph (a) of this subsection [*shall be*] **is** entitled to any income from the investments and the
24 [*treasurer of the county*] **escrow agent** shall pay the income when received to the depositor without
25 order.

26 (3) A bond or money may be filed or deposited under subsection (1) or (2) of this section at any
27 time after the filing of the claim of lien under ORS 87.035.

28 (4)(a) [*Any*] **A** person entitled to post a bond under subsection (1) of this section or a cash de-
29 posit under subsection (2) of this section may deliver pursuant to ORS 87.018 a written demand that
30 a lien perfected under ORS 87.035 be released and a notice that if [*it*] **the lien** is not released the

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 party making the demand may be entitled to recover the actual costs incurred by the party making
 2 the demand in complying with this section[,] **and** ORS 87.078 and 87.081 or the sum of \$500, which-
 3 ever is greater. If the lien is not released within 10 days after delivery of the demand and notice
 4 and the lien claimant or an assignor of the lien claimant does not bring a suit to foreclose the lien
 5 within the time provided in ORS 87.055, and if the person making the demand has complied with this
 6 section[,] **and** ORS 87.078 and 87.081, then the person failing to release and foreclose the lien shall
 7 be liable to the person making the demand for the actual costs incurred by the person making the
 8 demand in complying with this section[,] **and** ORS 87.078 and 87.081 or the sum of \$500, whichever
 9 is greater, in addition to any other remedy provided by law or equity.

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

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

22 **SECTION 2.** ORS 87.081 is amended to read:

23 87.081. [(1)] When a person files a bond **or deposits money** with [*the recording officer of the*
 24 *county*] **an escrow agent** under ORS 87.076 and serves notice of the filing **or deposit** upon the lien
 25 claimant, the person shall file with the same [*recording officer*] **escrow agent** an affidavit stating
 26 that such notice was served.

27 [(2) *When a person deposits money with the treasurer of a county under ORS 87.076 and serves*
 28 *notice of the deposit upon the lien claimant, the person shall file with the recording officer of the same*
 29 *county an affidavit stating that the deposit was made and notice was served.*]

30 **SECTION 3.** ORS 87.086 is amended to read:

31 87.086. If a lien claimant considers the bond filed with [*a recording officer of a county*] **an**
 32 **escrow agent under ORS 87.076** inadequate to protect the claim of the lien claimant for [*some*] **a**
 33 reason other than the amount of the bond, the lien claimant [*shall*] **may**, within 10 days [*of receipt*
 34 *of*] **after receiving** the notice of filing, petition the court in which the suit to foreclose the lien may
 35 be brought for a determination of the adequacy of the bond. The lien claimant shall state in detail
 36 the reasons for the inadequacy. Not later than two days after [*the*] filing [*of*] the petition with the
 37 court, the lien claimant shall send a notice of the filing and a copy of the petition by registered or
 38 certified mail to the person who filed the bond. After a hearing, if the court determines that the
 39 bond is inadequate for one or more of the reasons stated by the lien claimant, the court shall order
 40 such action as [*shall*] **will** make the bond adequate to protect the claim of lien.

41 **SECTION 4.** ORS 87.088 is amended to read:

42 87.088. The county recording officer shall record a written release of the lien or the [*county*
 43 *treasurer in whose office*] **escrow agent with whom** money is deposited under ORS 87.076 shall re-
 44 turn the money to the person who made the deposit when:

45 (1) A suit to foreclose the lien is not commenced within the time specified by ORS 87.055;

1 (2) The person who [*recorded*] **filed** the bond or deposited the money presents a certified copy
2 of a court's order for the release of the bond or all or some of the money to [*that*] **the** person; or

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

5 **SECTION 5. The amendments to ORS 87.076, 87.081, 87.086 and 87.088 by sections 1 to 4**
6 **of this 2009 Act apply to a filing of a surety bond or a deposit of money that occurs in con-**
7 **nection with a demand for a release of a perfected lien on or after the effective date of this**
8 **2009 Act.**

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