

House Bill 2366

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim 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 Residential Structure Lien Assistance Fund. Provides for Construction Contractors Board to administer fund. Continuously appropriates fund moneys to board. Requires board to replenish fund as necessary by imposing surcharge on application for issuance or renewal of residential construction contractor endorsement. Limits surcharge amount.

Allows capped payouts from fund to certain lien claimants if residential structure owner has paid residential construction contractor, but contractor has failed to pay lien claimant. Requires lien claimant accepting payment from fund to file satisfaction of judgment or satisfaction of lien.

Appropriates moneys from General Fund to Residential Structure Lien Assistance Fund for 2009-2011 biennium. Requires repayment from Residential Structure Lien Assistance Fund to General Fund no later than June 30, 2011. Provides for assessment of special surcharge on application for issuance or renewal of residential construction contractor endorsement during 2009-2011 biennium. Provides for first payment from fund to occur during calendar year 2010.

Declares emergency, effective July 1, 2009.

A BILL FOR AN ACT

1
2 Relating to liabilities arising from residential contractor activity; appropriating money; and declar-
3 ing an emergency.

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

5 **SECTION 1. (1) The Residential Structure Lien Assistance Fund is established in the**
6 **State Treasury, separate and distinct from the General Fund. Interest earned by the Resi-**
7 **dential Structure Lien Assistance Fund shall be credited to the fund.**

8 **(2) The fund shall consist of moneys from surcharges assessed under section 4 of this**
9 **2009 Act.**

10 **(3) Moneys in the fund are continuously appropriated to the Construction Contractors**
11 **Board for use as provided under section 2 of this 2009 Act.**

12 **SECTION 2. (1) As used in this section, "residential structure" means a structure that**
13 **is or contains a residential dwelling unit and that is located on a site having a total of not**
14 **more than four residential dwelling units.**

15 **(2) The Construction Contractors Board may pay moneys from the Residential Structure**
16 **Lien Assistance Fund to a lien claimant in satisfaction of a judgment or lien if:**

17 **(a) An action to enforce the lien was subject to a stay of proceedings under ORS 87.058**
18 **that has been dissolved, and the circuit court has allowed the lien under ORS 87.060 and is-**
19 **ssued a judgment that has become final by operation of law or on appeal; or**

20 **(b) The board has issued a final order in favor of a residential structure owner for a**
21 **complaint described in ORS 701.140 (2), further payment in satisfaction of the order is not**
22 **available under ORS 701.153, the owner has paid any moneys received under the order to the**
23 **lien claimant and the lien has not been fully discharged.**

24 **(3) A lien claimant who accepts payment from the fund toward satisfaction of a judgment**

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 or lien must agree to file a satisfaction of judgment for the judgment against the residential
 2 structure owner or satisfaction of lien for the lien against the residential structure.

3 (4) The board shall adopt rules establishing the manner in which a lien claimant may file
 4 for payment from the fund.

5 (5) The board shall make payments under this section annually on a date established by
 6 the board. The board may pay fund moneys to lien claimants only for judgments or liens that
 7 first qualified under subsection (2) of this section since the preceding annual payment from
 8 the fund. No judgment or lien shall qualify for more than one payment from the fund.

9 (6) Except as provided in subsections (7) and (8) of this section, the maximum payment
 10 that the board may make to a person under this section is the lesser of:

11 (a) \$20,000;

12 (b) The amount of damages awarded to the lien claimant under the judgment, less any
 13 amounts paid on the judgment by the residential structure owner; or

14 (c) The amount awarded to the residential structure owner under the final order of the
 15 board, less any payments made to the lien claimant of moneys described under subsection
 16 (2)(b) of this section.

17 (7) Attorney fees and costs are not eligible for inclusion in the maximum payment
 18 amounts described in subsection (6) of this section.

19 (8) The total of maximum payments under subsection (6) of this section for all judgments
 20 and board orders against a single contractor during a payment period may not exceed
 21 \$100,000. The board shall divide the \$100,000 limit among all eligible lien claimants claiming
 22 against the contractor, assigning each of the lien claimants a maximum payment amount as
 23 determined by board rules. A maximum payment amount assigned to a lien claimant under
 24 the rules may not exceed the limits established in subsection (6) of this section. The board
 25 may adopt rules to treat contractors having identical ownership, officers or management as
 26 a single contractor for purposes of this section.

27 (9) The board shall annually determine the percentage of the maximum payment amounts
 28 for judgments or liens that the fund will pay to lien claimants under this section. The board
 29 shall determine the percentage by dividing the total amount available for payment under the
 30 rules described in subsection (10) of this section by the total amount of the maximum pay-
 31 ments for which lien claimants are eligible under subsection (6) or (8) of this section. Each
 32 lien claimant sharing in the annual payment from the fund shall receive an amount equal to
 33 the percentage determined by the board under this subsection multiplied by the maximum
 34 payment amount for which the lien claimant is eligible.

35 (10) The board shall adopt rules for determining the total amount available for an annual
 36 payment from the fund. The board may limit the amount of the fund balance available for
 37 payment in any year in order to reduce annual variations in the percentage of payment. All
 38 moneys not retained as a reserve shall be available for the next payment period.

39 **SECTION 3.** (1) If the Construction Contractors Board makes a payment of moneys from
 40 the Residential Structure Lien Assistance Fund under section 2 of this 2009 Act in full or
 41 partial satisfaction of a judgment or lien, the board may seek to recover the payment amount
 42 from the contractor. In seeking repayment under this section, the board may exercise any
 43 right of recovery that would be available to the lien claimant.

44 (2) The recovery right of the board under this section is subordinate to any right of the
 45 residential structure owner to recoup amounts paid by the residential structure owner in

1 satisfaction of a judgment described in section 2 of this 2009 Act.

2 (3) A lien claimant or residential structure owner described in section 2 of this 2009 Act
 3 shall fully cooperate and assist the board in exercising any rights of the board to recover the
 4 payment amount from the contractor. The lien claimant or residential structure owner may
 5 not take any action to prejudice the recovery rights of the board.

6 (4) An amount paid from the fund and not recovered by the board from the contractor
 7 is a construction debt as defined in ORS 701.005.

8 **SECTION 4.** If an annual payment of moneys from the Residential Structure Lien As-
 9 sistance Fund under section 2 of this 2009 Act causes the balance of the fund immediately
 10 after the payment to be less than \$250,000, the Construction Contractors Board shall assess
 11 a surcharge on each application fee for issuance or renewal of a residential contractor
 12 endorsement. However, the board may exclude a particular category of residential contrac-
 13 tor endorsement from the surcharge if no part of the most recent payment from the fund
 14 was due to a judgment or order against that category of residential contractor. A surcharge
 15 imposed on an application for endorsement during a one-year period may not be greater than
 16 \$40. The total of all surcharges levied in any year under this section may not exceed the
 17 difference between \$500,000 and the fund balance immediately after the most recent annual
 18 payment from the fund.

19 **SECTION 5.** (1) Notwithstanding section 4 of this 2009 Act, for the period commencing
 20 on the effective date of this 2009 Act and ending June 30, 2011, the Construction Contractors
 21 Board shall assess the following surcharges on applications for issuance or renewal of an
 22 endorsement as a residential contractor:

- 23 (a) Residential general contractors, \$_____.
- 24 (b) Residential specialty contractors, \$_____.
- 25 (c) Residential limited contractors, \$_____.
- 26 (d) Residential developers, \$_____.

27 (2) Notwithstanding section 1 (2) of this 2009 Act, moneys from the surcharges described
 28 in subsection (1) of this section shall be deposited in the State Treasury to the credit of the
 29 Residential Structure Lien Assistance Fund.

30 (3) The board shall make the first annual distribution of payment from the fund no ear-
 31 lier than January 1, 2010, and no later than December 31, 2010.

32 **SECTION 6.** (1) In addition to and not in lieu of any other appropriation, there is appro-
 33 priated to the Construction Contractors Board, for the biennium beginning July 1, 2009, out
 34 of the General Fund, the amount of \$_____, for deposit to the credit of the Residential
 35 Structure Lien Assistance Fund.

36 (2) When the board determines that moneys in sufficient amount are available in the
 37 Residential Structure Lien Assistance Fund created by section 1 of this 2009 Act, but in no
 38 event later than June 30, 2011, the board shall reimburse the General Fund without interest,
 39 in an amount equal to the amount appropriated from the General Fund in subsection (1) of
 40 this section. The moneys used to reimburse the General Fund under this subsection shall
 41 not be considered a budget item on which a limitation is otherwise fixed by law, but shall be
 42 in addition to any specific biennial appropriations or amounts authorized to be expended from
 43 continuously appropriated moneys for any biennial period.

44 **SECTION 7.** Section 2 of this 2009 Act applies to:

- 45 (1) Judgments in actions filed on or after the effective date of this 2009 Act; and

1 **(2) Construction Contractor Board final orders obtained by persons who file complaints**
2 **described under ORS 701.140 (2) on or after the effective date of this 2009 Act.**

3 **SECTION 8.** **This 2009 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
5 **July 1, 2009.**

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