

B-Engrossed
House Bill 2955

Ordered by the Senate May 27
Including House Amendments dated April 30 and Senate Amendments
dated May 27

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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.

[Permits] **Directs** contracting agency to accept certain instruments from contractor in lieu of moneys held as retainage in connection with public improvement contracts and permits contractor to accept similar instruments from subcontractor. **Creates exception.**

A BILL FOR AN ACT

1
2 Relating to retainage in connection with public improvement contracts; creating new provisions; and
3 amending ORS 279C.560 and 701.435.

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

5 **SECTION 1.** ORS 279C.560 is amended to read:

6 279C.560. *[(1) Moneys retained by a contracting agency under ORS 279C.570 (7) shall be:]*

7 **(1) Unless a contracting agency that reserves an amount as retainage under ORS**
8 **279C.570 (7) finds in writing that accepting a bond or instrument described in paragraph (a)**
9 **or (b) of this subsection poses an extraordinary risk that is not typically associated with the**
10 **bond or instrument, the contracting agency in lieu of withholding moneys from payment**
11 **shall accept from a contractor:**

12 **(a) Bonds, securities or other instruments of a character described in subsection (6) of**
13 **this section that are deposited as provided in subsection (4) of this section; or**

14 **(b) A surety bond deposited as provided in subsection (7) of this section.**

15 **(2) A contracting agency that holds moneys as retainage under ORS 279C.570 (7) shall:**

16 **(a) [Retained] Hold the moneys in a fund [by the contracting agency and paid] and pay the**
17 **moneys to the contractor in accordance with ORS 279C.570; or**

18 **(b) At the [option] election of the contractor, [paid] pay the moneys to the contractor in ac-**
19 **cordance with subsection [(3) or (4)] (4) or (5) of this section and in a manner authorized by the**
20 **Director of the Oregon Department of Administrative Services.**

21 **[(2)] (3) If the contracting agency incurs additional costs as a result of the exercise of [the**
22 **options] an option described in subsection (1) or (5) of this section, the contracting agency may**
23 **recover [such] the costs from the contractor by [reduction of] reducing the final payment. As work**
24 **on the contract progresses, the contracting agency shall, upon demand, inform the contractor of all**
25 **accrued costs.**

26 **[(3)] (4) The contractor may deposit bonds, [or] securities or other instruments with the con-**
27 **tracting agency or in [any] a bank or trust company for the contracting agency to hold for 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 **contracting agency's benefit** *[to be held]* in lieu of *[the cash]* **moneys held as** retainage. *[for the*
 2 *benefit of the contracting agency. In such event]* **If the contracting agency accepts bonds, securities**
 3 **or other instruments deposited as provided in this subsection, the contracting agency** shall
 4 reduce the **moneys held as** retainage in an amount equal to the value of the bonds, *[and]* securities
 5 **and other instruments** and pay the amount of the reduction to the contractor in accordance with
 6 ORS 279C.570. Interest **or earnings** on the bonds, *[or]* securities **or other instruments** shall ac-
 7 crue to the contractor.

8 *[(4)]* **(5)** If the contractor elects, the **contracting agency shall deposit the** retainage as accu-
 9 mulated *[shall be deposited by the contracting agency]* in an interest-bearing account in a bank,
 10 savings bank, trust company or savings association for the benefit of the contracting agency. When
 11 the contracting agency is a state contracting agency, the account *[shall]* **must** be established
 12 through the State Treasurer. Earnings on the account *[shall]* accrue to the contractor.

13 *[(5)]* **(6)** Bonds, *[and]* securities **and other instruments** deposited or acquired in lieu of
 14 retainage, as permitted by this section, *[shall]* **must** be of a character approved by the Director of
 15 the Oregon Department of Administrative Services, including but not limited to:

16 (a) Bills, certificates, notes or bonds of the United States.

17 (b) Other obligations of the United States or *[its]* agencies **of the United States**.

18 (c) Obligations of *[any]* a corporation wholly owned by the federal government.

19 (d) Indebtedness of the Federal National Mortgage Association.

20 (e) **General obligation bonds of the State of Oregon or a political subdivision of the State**
 21 **of Oregon**.

22 (f) **Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.**

23 *[(6)]* **(7)** The contractor, with the approval of the contracting agency, may deposit a surety bond
 24 for all or any portion of the amount of funds retained, or to be retained, by the contracting agency
 25 in a form acceptable to the contracting agency. The bond and any proceeds **of the bond must**
 26 *[therefrom shall]* be made subject to all claims and liens and in the same manner and priority as set
 27 forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The contracting
 28 agency shall reduce the **moneys the contracting agency holds as** retainage in an amount equal
 29 to the value of the bond and pay the amount of the reduction to the contractor in accordance with
 30 ORS 279C.570. Whenever a contracting agency accepts a surety bond from a contractor in lieu of
 31 retainage, the contractor shall accept like bonds from *[any]* a subcontractor or supplier from which
 32 the contractor has retainage. The contractor shall then reduce the **moneys the contractor holds**
 33 **as** retainage in an amount equal to the value of the bond and pay the amount of the reduction to
 34 the subcontractor or supplier.

35 **SECTION 2.** ORS 701.435 is amended to read:

36 701.435. (1) When a contractor on a public contract deposits bonds, *[or]* securities **or other in-**
 37 **struments** under ORS 279C.560 *[(3)]* **(4)**, if the subcontract price exceeds \$50,000 and constitutes
 38 more than 10 percent of the cost of the public contract, a subcontractor on the public contract may
 39 deposit bonds, *[or]* securities **or other instruments** with the contractor or in *[any]* a bank or trust
 40 company **for the contractor to hold for the contractor's benefit** *[to be held]* in lieu of *[cash]*
 41 **moneys held as** retainage *[for the benefit of the contractor]*. *[In such event]* **If the contractor ac-**
 42 **cepts the bonds, securities or other instruments deposited as provided in this subsection,** the
 43 contractor shall reduce the **moneys held as** retainage in an amount equal to the value of the
 44 bonds, *[and]* securities **and other instruments** and pay the amount of the reduction to the sub-
 45 contractor in accordance with ORS 701.420 and 701.430. Interest **or earnings** on *[such]* **the** bonds,

1 [or] securities **or other instruments** shall accrue to the subcontractor.

2 (2) When a contractor on a public contract elects to have the public contracting agency deposit
3 the accumulated retainage in an interest-bearing account under ORS 279C.560 [(4)] **(5)**, the con-
4 tractor, within 30 days following payment of the final amount due for construction of the public
5 improvement, shall pay to each subcontractor who performed work on the construction the subcon-
6 tractor's proportional share of the interest earnings that accrued to the contractor as a result of
7 [that] **the** election. A subcontractor's share of the total amount of interest earnings under this sub-
8 section shall be determined by the proportion [which] **that** the amount of retainage withheld from
9 the subcontractor bears to the amount of retainage withheld from the contractor and the length of
10 time the retainage was withheld from the subcontractor. A share of the interest earnings shall be
11 paid to a subcontractor under this subsection only when:

12 (a) Retainage is withheld from the subcontractor for more than 60 days after the day on which
13 the first partial payment was due the subcontractor under the terms of the subcontract; and

14 (b) The amount of interest earnings due the subcontractor exceeds \$100.

15 (3) If the contractor incurs additional costs as a result of the exercise of [the options] **an option**
16 described in [subsections (1) and (2)] **subsection (1) or (2)** of this section, the contractor may re-
17 cover [such] **the** costs from the subcontractor by [reduction of] **reducing** the final payment. As work
18 on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all
19 accrued additional costs.

20 (4) Bonds, [and] securities **and other instruments** deposited or acquired in lieu of retainage,
21 as permitted by this section, [shall] **must** be of a character approved by the Director of the Oregon
22 Department of Administrative Services, including but not limited to:

23 (a) Bills, certificates, notes or bonds of the United States.

24 (b) Other obligations of the United States or [its] agencies **of the United States**.

25 (c) Obligations of [any] **a** corporation wholly owned by the federal government.

26 (d) Indebtedness of the Federal National Mortgage Association.

27 (e) **General obligation bonds of the State of Oregon or a political subdivision of the State**
28 **of Oregon**.

29 (f) **Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.**

30 **SECTION 3. The amendments to ORS 279C.560 and 701.435 by sections 1 and 2 of this 2009**
31 **Act apply to contracts first advertised or otherwise solicited or, if not advertised or solicited,**
32 **first entered into on or after the effective date of this 2009 Act.**

33