

House Bill 2955

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 **as introduced**.

Permits 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.

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 **that reserves an amount as retainage**
7 **under ORS 279C.570 (7) shall *[be:] accept from a contractor in lieu of withholding moneys from***
8 **payment:**

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

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

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

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

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

18 *[(2)]* (3) If the contracting agency incurs additional costs as a result of *[the exercise of the*
19 *options]* **exercising an option** described in subsection (1) of this section, the contracting agency may
20 recover *[such]* **the** costs from the contractor by *[reduction of]* **reducing** the final payment. As work
21 on the contract progresses, the contracting agency shall, upon demand, inform the contractor of all
22 accrued costs.

23 *[(3)]* (4) The contractor may deposit bonds or securities with the contracting agency or in
24 *[any]* a bank or trust company **for the contracting agency to hold as retainage for the con-**
25 **tracting agency's benefit** *[to be held]* in lieu of *[the cash]* **moneys held as retainage.** *[for the benefit*
26 *of the contracting agency. In such event]* **If the contracting agency accepts bonds or securities**
27 **deposited as provided in this subsection, the contracting agency shall reduce the moneys held**
28 **as retainage** in an amount equal to the value of the bonds and securities and pay the amount of the
29 reduction to the contractor in accordance with ORS 279C.570. Interest on the bonds or securities
30 shall accrue to the contractor.

31 *[(4)]* (5) If the contractor elects, the **contracting agency shall deposit the** retainage as accu-

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 mulated [*shall be deposited by the contracting agency*] in an interest-bearing account in a bank,
 2 savings bank, trust company or savings association for the benefit of the contracting agency. When
 3 the contracting agency is a state contracting agency, the account [*shall*] **must** be established
 4 through the State Treasurer. Earnings on the account [*shall*] accrue to the contractor.

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

- 8 (a) Bills, certificates, notes or bonds of the United States.
- 9 (b) Other obligations of the United States or [*its*] agencies **of the United States**.
- 10 (c) Obligations of [*any*] a corporation wholly owned by the federal government.
- 11 (d) Indebtedness of the Federal National Mortgage Association.
- 12 (e) **Time certificates of deposit or savings account passbooks issued by a commercial**
 13 **bank, savings and loan association or mutual savings bank authorized to do business in this**
 14 **state.**
- 15 (f) **Corporation bonds rated A or better by a recognized rating service.**
- 16 (g) **General obligation bonds of the State of Oregon or a political subdivision of the State**
 17 **of Oregon.**
- 18 (h) **Irrevocable letters of credit issued by an insured institution, as defined in ORS**
 19 **706.008.**

20 [(6)] (7) The contractor, with the approval of the contracting agency, may deposit a surety bond
 21 for all or any portion of the amount of funds retained, or to be retained, by the contracting agency
 22 in a form acceptable to the contracting agency. The bond and any proceeds **of the bond must**
 23 [*therefrom shall*] be made subject to all claims and liens and in the same manner and priority as set
 24 forth for retainage under ORS 279C.550 to 279C.570 and 279C.600 to 279C.625. The contracting
 25 agency shall reduce the **moneys the contracting agency holds as** retainage in an amount equal
 26 to the value of the bond and pay the amount of the reduction to the contractor in accordance with
 27 ORS 279C.570. Whenever a contracting agency accepts a surety bond from a contractor in lieu of
 28 retainage, the contractor shall accept like bonds from [*any*] a subcontractor or supplier from which
 29 the contractor has retainage. The contractor shall then reduce the **moneys the contractor holds**
 30 **as** retainage in an amount equal to the value of the bond and pay the amount of the reduction to
 31 the subcontractor or supplier.

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

33 701.435. (1) When a contractor on a public contract deposits bonds or securities under ORS
 34 279C.560 [(3)] (4), if the subcontract price exceeds \$50,000 and constitutes more than 10 percent of
 35 the cost of the public contract, a subcontractor on the public contract may deposit bonds or secu-
 36 rities with the contractor or in [*any*] a bank or trust company **for the contractor to hold as**
 37 **retainage for the contractor's benefit** [*to be held*] in lieu of [*cash*] **moneys held as** retainage [*for*
 38 *the benefit of the contractor*]. [*In such event*] **If the contractor accepts the bonds or securities**
 39 **deposited as provided in this subsection,** the contractor shall reduce the **moneys held as**
 40 retainage in an amount equal to the value of the bonds and securities and pay the amount of the
 41 reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on [*such*] **the**
 42 bonds or securities shall accrue to the subcontractor.

43 (2) When a contractor on a public contract elects to have the public contracting agency deposit
 44 the accumulated retainage in an interest-bearing account under ORS 279C.560 [(4)] (5), the con-
 45 tractor, within 30 days following payment of the final amount due for construction of the public

1 improvement, shall pay to each subcontractor who performed work on the construction the subcon-
 2 tractor's proportional share of the interest earnings that accrued to the contractor as a result of
 3 *[that]* **the** election. A subcontractor's share of the total amount of interest earnings under this sub-
 4 section shall be determined by the proportion *[which]* **that** the amount of retainage withheld from
 5 the subcontractor bears to the amount of retainage withheld from the contractor and the length of
 6 time the retainage was withheld from the subcontractor. A share of the interest earnings shall be
 7 paid to a subcontractor under this subsection only when:

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

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

11 (3) If the contractor incurs additional costs as a result of *[the exercise of the options]* **exercising**
 12 **an option** described in subsections (1) and (2) of this section, the contractor may recover *[such]* **the**
 13 costs from the subcontractor by *[reduction of]* **reducing** the final payment. As work on the subcon-
 14 tract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued addi-
 15 tional costs.

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

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

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

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

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

23 (e) **Time certificates of deposit or savings account passbooks issued by a commercial**
 24 **bank, savings and loan association or mutual savings bank authorized to do business in this**
 25 **state.**

26 (f) **Corporation bonds rated A or better by a recognized rating service.**

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

29 (h) **Irrevocable letters of credit issued by an insured institution, as defined in ORS**
 30 **706.008.**

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