

# Enrolled Senate Bill 55

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CHAPTER .....

## AN ACT

Relating to ineligibility for public works contracts; creating new provisions; amending ORS 279C.860 and 279C.870; and declaring an emergency.

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

**SECTION 1.** ORS 279C.860 is amended to read:

279C.860. (1) **A contractor, subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for public works for a period of three years from the date on which the Commissioner of the Bureau of Labor and Industries publishes the contractor's or subcontractor's name on the list described in subsection (2) of this section. The commissioner shall add a contractor's or subcontractor's name to the list after determining, in accordance with ORS chapter 183, that:** *[When the Commissioner of the Bureau of Labor and Industries, in accordance with the provisions of ORS chapter 183, determines that a]*

(a) **The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works[.];**

(b) **The [a] subcontractor has failed to pay to [its] the subcontractor's employees amounts required by ORS 279C.840 and the contractor has paid those amounts on the subcontractor's behalf[.];**

(c) **The [or a] contractor or subcontractor has intentionally failed or refused to post the prevailing rates of wage as required by ORS 279C.840 (4)[.]; or**

(d) **The contractor or subcontractor has intentionally falsified information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.** *[the contractor, subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest shall be ineligible, for a period not to exceed three years from the date of publication of the name of the contractor or subcontractor on the ineligible list as provided in this section, to receive any contract or subcontract for public works.]*

(2) The commissioner shall maintain a written list of the names of those contractors and subcontractors determined to be ineligible under this section and the period of time for which they are ineligible. *[A copy of the list shall be published, furnished upon request and made available to contracting agencies.]* **The commissioner shall publish a copy of the list, furnish the list upon request and make the list available to contracting agencies.**

*[(2)]* (3) When the contractor or subcontractor is a corporation, the provisions of *[subsection (1) of]* this section apply to any corporate officer or corporate agent who is responsible for the failure

or refusal to pay or post the prevailing rate of wage, [or] the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf **or the intentional falsification of information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.**

[3] (4) For good cause shown, the commissioner may direct the removal of the name of a contractor or subcontractor from the ineligible list.

[4] (5) To assist the commissioner in determining whether the contractor or subcontractor is paying the prevailing rate of wage, when a prevailing rate of wage claim is filed, or evidence indicating a violation has occurred, a contractor or subcontractor required to pay the prevailing rate of wage to workers employed upon public works under ORS 279C.800 to 279C.870 shall send a certified copy of the payroll for those workers when the commissioner requests the certified copy.

**SECTION 2.** ORS 279C.870 is amended to read:

279C.870. (1) The Commissioner of the Bureau of Labor and Industries or any other person may bring a civil action in any court of competent jurisdiction to require a public agency under a public contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of wage to workers employed on that contract and to require the contractor to pay the prevailing rate of wage and any deficiencies that can be shown to exist because of improper wage payments already made. In addition to other relief, the court may also enjoin the contractor or subcontractor from committing future violations. The contractor or subcontractor involved shall be named as a party in all civil actions brought under this section. In addition to other costs, the court may award the prevailing party reasonable attorney fees at the trial and on appeal. However, attorney fees may not be awarded against the commissioner under this section.

(2) The court shall require any party, other than the commissioner, that brings a civil action under this section to post a bond sufficient to cover the estimated attorney fees and costs to the public agency and to the contractor or subcontractor of any temporary restraining order, preliminary injunction or permanent injunction awarded in the action, in the event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the commissioner would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279C.860 [(1)]. If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279C.860 [(2)] (4).

**SECTION 3.** The amendments to ORS 279C.860 and 279C.870 by sections 1 and 2 of this 2009 Act apply to contracts for public works awarded on or after the effective date of this 2009 Act.

**SECTION 4.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

**Passed by Senate February 16, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 11, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State