

House Bill 2836

Sponsored by Representative WITT (at the request of NW Worker Justice Project) (Pre-session filed.)

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**.

Requires Construction Contractors Board to investigate and process complaint for unpaid wages if certain conditions met. Prohibits board from rejecting complaint or refusing to open investigation if rejection or refusal to open is based on certain grounds.

Requires board to suspend license of contractor that fails to satisfy judgment for unpaid wages and to post summary of unpaid judgment information on board website.

Requires board, to extent practicable, to actively recruit and hire multilingual persons when filling positions that require contact with public. Repeals requirement on January 2, 2014.

Makes failure to comply with certain statutes regarding payment of wages upon termination, wage rates or conditions of employment grounds for imposing license sanctions or civil penalty against contractor.

Expands requirement that construction contractor provide board with copy of unpaid judgment against contractor.

Allows person that construction contractor permits or suffers to perform work for contractor to file complaint for unpaid wages.

Increases total amount that may be paid from residential contractor bond to satisfy complaint of nonowner. Increases total amount that may be paid from residential contractor bond for costs, interest and attorney fees.

A BILL FOR AN ACT

1
2 Relating to the Construction Contractors Board; creating new provisions; and amending ORS
3 701.005, 701.106, 701.109, 701.140 and 701.153.

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

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**
6 **chapter 701.**

7 **SECTION 2. (1) The Construction Contractors Board shall accept for investigation and**
8 **processing any complaint against a contractor for unpaid wages that:**

9 (a) **Is timely filed;**

10 (b) **States the amount of unpaid wages alleged to be owed to the person filing the com-**
11 **plaint; and**

12 (c) **Identifies each contractor being complained against.**

13 (2) **The board may not reject a complaint described in subsection (1) of this section, or**
14 **refuse to open an investigation of the complaint, if the rejection or refusal to open is based**
15 **upon the person filing the complaint:**

16 (a) **Being unable to specify the exact days, hours or locations of the employment;**

17 (b) **Being unable to provide documentation of the employment by a contractor alleged to**
18 **be potentially responsible in whole or in part for payment of the wages claimed;**

19 (c) **Being unable to provide witnesses to the employment who are unrelated to the**
20 **claimant; or**

21 (d) **Alleging that the person was jointly employed by a contractor that did not have a**
22 **direct contractual relationship with the person.**

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 **SECTION 3. (1) If the Construction Contractors Board learns that a judgment against a**
2 **contractor for unpaid wages remains unsatisfied more than 30 days after becoming final by**
3 **operation of law or on appeal, no later than 15 days after learning that the judgment is un-**
4 **satisfied the board shall:**

5 **(a) Suspend the license of the contractor; and**

6 **(b) Post a summary of the judgment information on a website maintained by the board.**

7 **(2) The board shall keep a license suspended and information posted as provided in sub-**
8 **section (1) of this section until the board learns that the judgment for unpaid wages has been**
9 **satisfied.**

10 **SECTION 4. The Construction Contractors Board shall, to the extent practicable:**

11 **(1) Actively recruit multilingual candidates when hiring for positions requiring contact**
12 **with the public; and**

13 **(2) Give hiring preference to multilingual candidates when hiring for positions requiring**
14 **contact with the public.**

15 **SECTION 5. Section 4 of this 2011 Act is repealed January 2, 2014.**

16 **SECTION 6.** ORS 701.005, as amended by section 4, chapter 77, Oregon Laws 2010, is amended
17 to read:

18 701.005. As used in this chapter:

19 (1) "Board" means the Construction Contractors Board.

20 (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

21 (a) Commercial general contractor level 1;

22 (b) Commercial specialty contractor level 1;

23 (c) Commercial general contractor level 2;

24 (d) Commercial specialty contractor level 2; or

25 (e) Commercial developer.

26 (3) "Commercial developer" means a developer of property that is zoned for or intended for use
27 compatible with a small commercial or large commercial structure.

28 (4) "Construction debt" means an amount owed under:

29 (a) An order or arbitration award issued by the board that has become final by operation of law;

30 (b) A judgment or civil penalty that has become final by operation of law arising from con-
31 struction activities within the United States; or

32 (c) A judgment or civil penalty that has become final by operation of law arising from a failure
33 to comply with ORS 656.017.

34 (5) "Contractor" means any of the following:

35 (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers
36 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,
37 move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other
38 structure, project, development or improvement attached to real estate, or to do any part thereof.

39 (b) A person that purchases or owns property and constructs or for compensation arranges for
40 the construction of one or more residential structures or small commercial structures with the in-
41 tent of selling the structures.

42 (c) A school district, as defined in ORS 332.002, that permits students to construct a residential
43 structure or small commercial structure as an educational experience to learn building techniques
44 and sells the completed structure.

45 (d) A community college district, as defined in ORS 341.005, that permits students to construct

1 a residential structure or small commercial structure as an educational experience to learn building
 2 techniques and sells the completed structure.

3 (e) A person except a landscape contracting business, nurseryman, gardener or person engaged
 4 in the commercial harvest of forest products, that is engaged as an independent contractor to re-
 5 move trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

6 (f) A business that supplies the services of a home inspector certified under ORS 701.350 or a
 7 cross-connection inspector and backflow assembly tester certified under ORS 448.279.

8 (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid
 9 to clean or service chimneys.

10 (6) “Developer” means a contractor that owns property or an interest in property and engages
 11 in the business of arranging for construction work or performing other activities associated with the
 12 improvement of real property, with the intent to sell the property.

13 **(7) “Employed” means permitted or suffered to perform work.**

14 [(7)(a)] **(8)(a)** “General contractor” means a contractor whose business operations require the
 15 use of more than two unrelated building trades or crafts that the contractor supervises or performs
 16 in whole or part, whenever the sum of all contracts on any single property, including materials and
 17 labor, exceeds an amount established by rule by the board.

18 (b) “General contractor” does not mean a specialty contractor or a residential limited contrac-
 19 tor.

20 [(8)(a)] **(9)(a)** “Home improvement” means a renovation, remodel, repair or alteration by a resi-
 21 dential contractor to an existing owner-occupied:

22 (A) Residence that is a site-built home;

23 (B) Condominium, rental residential unit or other residential dwelling unit that is part of a
 24 larger structure, if the property interest in the unit is separate from the property interest in the
 25 larger structure;

26 (C) Modular home constructed off-site;

27 (D) Manufactured dwelling; or

28 (E) Floating home, as defined in ORS 830.700.

29 (b) “Home improvement” does not include a renovation, remodel, repair or alteration by a resi-
 30 dential contractor:

31 (A) To a structure that contains one or more dwelling units and is four stories or less above
 32 grade; or

33 (B) That the residential contractor performed in the course of constructing a new residential
 34 structure.

35 [(9)(a)] **(10)(a)** “Home inspector” means a person who, for a fee, inspects and provides written
 36 reports on the overall physical condition of a residential structure and the appurtenances of the
 37 residential structure.

38 (b) “Home inspector” does not include persons certified under ORS chapter 455 to inspect new,
 39 repaired or altered structures for compliance with the state building code.

40 [(10)] **(11)** “Key employee” means an employee or owner of a contractor who is a corporate of-
 41 ficer, manager, superintendent, foreperson or lead person or any other employee the board identifies
 42 by rule.

43 [(11)] **(12)** “Large commercial structure” means a structure that is not a residential structure
 44 or small commercial structure.

45 [(12)] **(13)** “Officer” means any of the following persons:

1 (a) A president, vice president, secretary, treasurer or director of a corporation.

2 (b) A general partner in a limited partnership.

3 (c) A manager in a manager-managed limited liability company.

4 (d) A member of a member-managed limited liability company.

5 (e) A trustee.

6 (f) A person the board defines by rule as an officer. The definition of officer adopted by board
7 rule may include persons not listed in this subsection who may exercise substantial control over a
8 business.

9 [(13)] (14) "Residential contractor" means a licensed contractor that holds an endorsement as
10 a:

11 (a) Residential general contractor;

12 (b) Residential specialty contractor;

13 (c) Residential limited contractor; or

14 (d) Residential developer.

15 [(14)] (15) "Residential developer" means a developer of property that is zoned for or intended
16 for use compatible with a residential or small commercial structure.

17 [(15)(a)] (16)(a) "Residential structure" means:

18 (A) A residence that is a site-built home;

19 (B) A structure that contains one or more dwelling units and is four stories or less above grade;

20 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a
21 larger structure, if the property interest in the unit is separate from the property interest in the
22 larger structure;

23 (D) A modular home constructed off-site;

24 (E) A manufactured dwelling; or

25 (F) A floating home as defined in ORS 830.700.

26 (b) "Residential structure" does not mean:

27 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
28 nonresidential units;

29 (B) Transient lodging;

30 (C) A residential school or residence hall;

31 (D) A state or local correctional facility other than a local facility for persons enrolled in work
32 release programs maintained under ORS 144.460;

33 (E) A youth correction facility as defined in ORS 420.005;

34 (F) A youth care center operated by a county juvenile department under administrative control
35 of a juvenile court pursuant to ORS 420.855 to 420.885;

36 (G) A detention facility as defined in ORS 419A.004;

37 (H) A nursing home;

38 (I) A hospital; or

39 (J) A place constructed primarily for recreational activities.

40 [(16)] (17) "Responsible managing individual" means an individual who:

41 (a) Is an owner described in ORS 701.094 or an employee of the business;

42 (b) Exercises management or supervisory authority, as defined by the board by rule, over the
43 construction activities of the business; and

44 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122
45 within a period the board identifies by rule;

- 1 (B) Demonstrated experience the board requires by rule; or
- 2 (C) Complied with the licensing requirements of ORS 446.395.

3 [(17)] (18) "Small commercial structure" means:

4 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
5 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
6 the highest interior overhead finish of the structure;

7 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the
8 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not
9 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish
10 of the unit; or

11 (c) A nonresidential structure of any size for which the contract price of all construction con-
12 tractor work to be performed on the structure as part of a construction project does not total more
13 than \$250,000.

14 [(18)] (19) "Specialty contractor" means a contractor who performs work on a structure, project,
15 development or improvement and whose operations as such do not fall within the definition of
16 "general contractor." "Specialty contractor" includes a person who performs work regulated under
17 ORS 446.395.

18 [(19)] (20) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of
19 attached units in which:

20 (a) Each attached unit extends from foundation to roof with open space on two sides; and

21 (b) Each dwelling unit is separated by a property line.

22 **SECTION 7.** ORS 701.106 is amended to read:

23 701.106. (1) A contractor that violates or fails to comply with any of the following provisions
24 or any rules adopted under those provisions is subject to the suspension of, revocation of, refusal
25 to issue or refusal to renew a license, imposition of a civil penalty under ORS 701.992, or a combi-
26 nation of those sanctions:

27 (a) ORS 87.007 (2).

28 (b) ORS chapter 316 or 317.

29 (c) ORS 446.225 to 446.285.

30 (d) ORS 446.395 to 446.420.

31 (e) ORS 447.010 to 447.156.

32 (f) ORS chapter 455.

33 (g) ORS 460.005 to 460.175.

34 (h) ORS 479.510 to 479.945.

35 (i) ORS 480.510 to 480.670.

36 **(j) ORS 652.140.**

37 **(k) ORS 653.010 to 653.261.**

38 [(j)] (L) ORS chapter 656.

39 [(k)] (m) ORS chapter 657.

40 [(L)] (n) ORS 670.600.

41 [(m)] (o) ORS 671.510 to 671.760.

42 [(n)] (p) ORS chapter 693.

43 (2) The imposition of a sanction under this section is subject to ORS 183.413 to 183.497.

44 **SECTION 8.** ORS 701.109 is amended to read:

45 701.109. (1) As used in this section, "judgment" means:

1 (a) [A judgment issued in a court action] **A general judgment as defined in ORS 18.005 or an**
 2 **equivalent judgment from another state or a United States court; or**

3 (b) A court order that confirms an arbitration award.

4 (2) A contractor shall send the Construction Contractors Board a copy of a [final] judgment
 5 entered by a circuit court of this state, or by an equivalent court in another state **or a United**
 6 **States court**, if the judgment orders the contractor to pay damages that arise from a breach of
 7 contract, [or from] negligent or improper work **or a failure to pay wages**, and that relate to the
 8 construction or proposed construction of a residential structure. The contractor shall cause the
 9 copy of the [final] judgment to be delivered to the board no later than 45 days after the [final]
 10 judgment is recorded.

11 (3) Notwithstanding subsection (2) of this section, a contractor is not required to send the board
 12 a copy of a [final] judgment if:

13 (a) The contractor paid the damages and other amounts payable by the contractor under the
 14 judgment no later than 30 days after recording of the judgment; or

15 (b) The contractor is appealing the judgment and has filed any undertaking on appeal required
 16 by ORS 19.300.

17 (4) In determining whether to impose a disciplinary sanction under this chapter, the board shall
 18 give due consideration to any past or current attempts by the contractor to make payments toward
 19 satisfaction of a judgment.

20 **SECTION 9.** ORS 701.140 is amended to read:

21 701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the
 22 performance, of work that requires a contractor license issued by the Construction Contractors
 23 Board. The complaint must be of one or more of the following types:

24 (1) A complaint against a contractor by the owner of a structure or other real property for the
 25 following:

26 (a) Negligent work.

27 (b) Improper work.

28 (c) Breach of contract.

29 (2) A complaint against a contractor by the owner of a structure or other real property to dis-
 30 charge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060
 31 and 87.075 to 87.093 under circumstances described under this subsection. If the complaint is pro-
 32 cessed under ORS 701.145, the Construction Contractors Board may reduce the amount of the com-
 33 plaint by any amount the complainant owes the contractor. The board shall process complaints
 34 described in this subsection under ORS 701.145 only if:

35 (a) The owner paid the contractor for that contractor's work subject to this chapter;

36 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to
 37 87.093 because the contractor failed to pay the person claiming the lien for that person's contribu-
 38 tion toward completion of the improvement; and

39 (c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).

40 (3) A complaint against a licensed subcontractor by a licensed contractor for the following:

41 (a) Negligent work;

42 (b) Improper work; or

43 (c) Breach of contract.

44 (4) A complaint by a person furnishing labor to, [a contractor] **employed by** or owed employee
 45 benefits by, a contractor.

1 (5) A complaint, as limited by rule of the board, by a person furnishing material or renting or
 2 supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.

3 (6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising
 4 out of a contract.

5 **SECTION 10.** ORS 701.153 is amended to read:

6 701.153. (1) If an order of the Construction Contractors Board that determines a complaint under
 7 ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the
 8 date the order becomes final, the complainant may file the order with the county clerk in any county
 9 of this state.

10 (2) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition
 11 to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant
 12 to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order
 13 may be enforced as provided in ORS 205.125 and 205.126.

14 (3)(a) Payments from the surety bond of a residential contractor pursuant to board order and
 15 notice are satisfied in the following priority in any 90-day period:

16 (A) Board orders as a result of complaints against a residential contractor by the owner of a
 17 residential or small commercial structure have payment priority to the full extent of the bond over
 18 all other types of complaints.

19 (B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond,
 20 then amounts due as a result of all other types of residential or small commercial structure com-
 21 plaints filed within that 90-day period may be satisfied from the bond, except that the total amount
 22 paid from any one bond to nonowner complainants may not exceed [\$3,000] **\$5,000**.

23 (b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent
 24 90-day periods begin on the date the first complaint is filed with the board after the close of the
 25 preceding 90-day period.

26 (4) If the total complaints filed with the board against a residential contractor within 90 days
 27 after the board receives notice of the first complaint against the contractor exceed the amount of
 28 the bond available for those complaints, the bond shall be apportioned as the board determines,
 29 subject to the priorities established under this section.

30 (5) If the total amounts due as a result of complaints filed with the board within 90 days after
 31 the first complaint is filed do not exceed the amount of the bond available for those complaints, all
 32 amounts due as a result of complaints filed within the 90-day period shall have priority over all
 33 complaints subsequently filed until the amount of the bond available for the payment of complaints
 34 is exhausted.

35 (6) The total amount paid from a residential contractor bond for costs, interest and attorney fees
 36 may not exceed [\$3,000] **\$5,000**.

37 **SECTION 11. Section 2 of this 2011 Act applies to complaints filed with the Construction**
 38 **Contractors Board on or after the effective date of this 2011 Act.**

39 **SECTION 12. Section 3 of this 2011 Act applies to judgments that become final by oper-**
 40 **ation of law before, on or after the effective date of this 2011 Act.**

41 **SECTION 13. The amendments to ORS 701.106 by section 7 of this 2011 Act apply to vio-**
 42 **lations or failures to comply with ORS 652.140 or 653.010 to 653.261 that occur on or after the**
 43 **effective date of this 2011 Act.**

44 **SECTION 14. The amendments to ORS 701.109 by section 8 of this 2011 Act apply to**
 45 **judgments recorded on or after the effective date of this 2011 Act.**

1 **SECTION 15.** The amendments to ORS 701.153 by section 10 of this 2011 Act do not apply
2 for the purpose of increasing the amount payable from a bond for nonowner complaints or
3 for costs, interest and attorney fees pursuant to a notice and order issued by the Con-
4 struction Contractors Board before the effective date of this 2011 Act.

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