

House Bill 3556

Sponsored by Representative SCHAUFLER (at the request of Oregon State Building and Construction Trades Council)

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 assignee of person that submitted bid or proposal for, but did not obtain, certain public contracts to commence action against successful bidder or proposer if assignee can prove certain violations of Public Contracting Code by preponderance of evidence.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to actions for violation of the Public Contracting Code; creating new provisions; amending
3 ORS 279C.465; and declaring an emergency.

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

5 **SECTION 1.** ORS 279C.465 is amended to read:

6 279C.465. (1) *[Any person that loses a competitive bid or proposal for a contract involving the*
7 *construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, re-*
8 *placement or renovation of a building or structure]* **If a person submits a competitive bid or pro-**
9 **posal for, but does not obtain, a public contract to construct, repair, remodel, alter, convert,**
10 **modernize, improve, rehabilitate, replace or renovate a building or structure, the person or**
11 **an assignee of the person** may bring an action for damages against another person who *[is]* **was**
12 awarded the **public** contract *[for which the bid or proposal was made]* if the person *[making the*
13 *losing bid or proposal]* **or the person's assignee** can establish that the other person knowingly vi-
14 olated ORS 279C.840, 656.017, 657.505, 701.021 or 701.026 while performing the work under the
15 **public** contract¹, or knowingly failed to pay to the Department of Revenue *[all]* sums withheld from
16 employees under ORS 316.167.

17 (2) A person *[bringing]* **that brings** an action under this section must establish a violation of
18 ORS 279C.840, 316.167, 656.017, 657.505, 701.021 or 701.026 by a preponderance of the evidence.

19 (3) *[Upon]* **After** establishing that the violation occurred, the person **or the person's assignee**
20 shall recover, as liquidated damages, 10 percent of the total amount of the contract or \$5,000,
21 whichever is greater.

22 (4) In *[any]* **an** action under this section, the prevailing party is entitled to an award of rea-
23 sonable attorney fees.

24 (5) **The person or the person's assignee must commence** an action under this section *[must*
25 *be commenced]* within two years *[of]* **after** the substantial completion of the construction, repair,
26 remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement or ren-
27 ovation. For the purposes of this subsection, "substantial completion" has the meaning given that
28 term in ORS 12.135.

29 (6) A person may not recover any amounts under this section if the defendant in the action es-

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 tablishes by a preponderance of the evidence that the *[plaintiff]* **person who did not obtain the**
 2 **public contract:**

3 (a) Was in violation of ORS 701.021 or 701.026 at the time *[of making the]* **the person submitted**
 4 **a bid or proposal** *[on]* **for** the contract;

5 (b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to *[any employees of the*
 6 *plaintiff as of]* **the person’s employees at** the time *[of making]* **the person submitted** the bid or
 7 proposal *[on]* **for** the contract; or

8 (c) Was in violation of ORS 279C.840 with respect to *[any contract performed by the plaintiff]* **a**
 9 **contract the person performed** within one year before *[making]* **the person submitted** the bid
 10 or proposal *[on]* **for** the contract at issue in the action.

11 **SECTION 2. The amendments to ORS 279C.465 by section 1 of this 2011 Act apply to a**
 12 **contract that a contracting agency first advertises or otherwise solicits on or after the op-**
 13 **erative date set forth in section 3 of this 2011 Act or, if the contracting agency does not**
 14 **advertise or solicit the contract, to a contract that the contracting agency enters into on**
 15 **or after the operative date set forth in section 3 of this 2011 Act.**

16 **SECTION 3. (1) The amendments to ORS 279C.465 by section 1 of this 2011 Act become**
 17 **operative on the 91st day following the effective date of this 2011 Act.**

18 **(2) The Director of the Oregon Department of Administrative Services, the Attorney**
 19 **General or a contracting agency that adopts rules under ORS 279A.065 may take any action**
 20 **before the operative date specified in subsection (1) of this section that is necessary to enable**
 21 **the director, the Attorney General or the contracting agency to exercise, on and after the**
 22 **operative date specified in subsection (1) of this section, all of the duties, functions and**
 23 **powers conferred on the director, the Attorney General or the contracting agency by the**
 24 **amendments to ORS 279C.465 by section 1 of this 2011 Act.**

25 **SECTION 4. This 2011 Act being necessary for the immediate preservation of the public**
 26 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 27 **on its passage.**