

Senate Bill 154

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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**.

Increases threshold amount of claims for which Construction Contractors Board may adopt rule making contested case proceeding unavailable.

A BILL FOR AN ACT

Relating to claims against construction contractors; amending ORS 701.148.

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

SECTION 1. ORS 701.148 is amended to read:

701.148. (1) Subject to subsection (4) of this section, if the resolution of a complaint under ORS 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (3) of this section. This subsection does not authorize the board to require binding arbitration of a complaint that is subject to ORS 701.146.

(2) The board may use mediation or arbitration to resolve a construction dispute between any parties who agree to follow the rules of the board, other than a dispute involving work on a large commercial structure.

(3) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (1) and (2) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and

(e) Include any other provision necessary to conform the arbitration to this chapter.

(4) A party to a complaint that is subject to a board order of binding arbitration under subsection (1) of this section may avoid the arbitration if the party requests to have the complaint resolved through a contested case hearing or files a court action. A party making a hearing request or filing a court action under this subsection is subject to the following provisions:

(a) If the party requests to have a complaint resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in

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 writing to the board and to all parties entitled by board rule to receive a copy of the request.

2 (b) If the party files a court action, the party must, within the time specified in paragraph (c)
3 of this subsection, deliver a copy of the party's court pleading to the board and to all persons enti-
4 tled by board rule to receive a copy of the pleading. If the party filing the court action is the
5 complainant to the board, the complainant must plead all facts and issues of the board complaint in
6 the court action. If the court action is filed by the contractor against whom a board complaint is
7 alleged, the court action must be an action for damages, an action for declaratory judgment or an-
8 other action that allows the board complainant to file a response pleading all facts and issues of the
9 board complaint. The board complainant has the burden of proving the elements of the board com-
10 plaint in a court action described in this paragraph.

11 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver the contested
12 case hearing request or the copy of the party's court pleading to the board as described in para-
13 graphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an
14 arbitration hearing has been scheduled. Failure to timely deliver a request or court pleading under
15 this paragraph constitutes consent to the binding arbitration.

16 (d) If a party makes a timely request under paragraph (a) of this subsection for a contested case
17 hearing and another party timely files a court action and complies with paragraph (b) of this sub-
18 section, the filing of the court action supersedes the request for a contested case hearing.

19 (e) A party may not withdraw a request made in compliance with paragraph (a) of this sub-
20 section unless all parties agree to the withdrawal.

21 (f) The board may adopt a rule that a contested case hearing for a complaint seeking less than
22 [~~\$1,000~~] **\$5,000** is not available under this subsection.

23 (g) The provisions of paragraph (b) of this subsection are in addition to any other requirements
24 imposed by law regarding the filing of a court action.

25 (5) The board may refuse to accept a dispute for mediation or arbitration under subsection (1)
26 or (2) of this section if the board determines that the nature or complexity of the dispute is such that
27 a court or other forum is more appropriate for resolution of the dispute.

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