

A-Engrossed
Senate Bill 727

Ordered by the Senate April 27
Including Senate Amendments dated April 27

Sponsored by COMMITTEE ON JUDICIARY (at the request of Northwest Workers Justice Project and Oregon Coalition to Stop Wage Theft)

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.

Changes process for Construction Contractors Board resolution of certain complaints for unpaid wages.

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 dismissal of complaint if civil action or wage claim not filed. Provides for board processing of proposed order following court judgment or wage claim final order.**

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, 701.139, 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 processing any**
8 **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 complainant; and**

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

12 (2) **The board may not reject a complaint described in subsection (1) of this section if the**
13 **rejection is based upon the complainant:**

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

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

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 (c) Being unable to provide witnesses to the employment who are unrelated to the
2 complainant; or

3 (d) Alleging that the complainant was jointly employed by a contractor that did not have
4 a direct contractual relationship with the complainant.

5 (3) The board shall dismiss a complaint described in subsection (1) of this section 120 days
6 after filing if the complainant has not informed the board that the complainant has filed a
7 civil action or filed a wage claim with the Bureau of Labor and Industries to collect the un-
8 paid wages. If the complainant timely notifies the board that the complainant has filed a civil
9 action or wage claim to collect the unpaid wages, the board shall suspend processing of the
10 complaint filed with the board during the pendency of the civil action or wage claim.

11 (4) If a civil action or wage claim results in a finding that the contractor is not liable for
12 the unpaid wages described in subsection (1) of this section, the board shall dismiss the
13 complaint filed with the board.

14 (5) If a civil action or wage claim to collect unpaid wages results in a court judgment or
15 in a final order by the Commissioner of the Bureau of Labor and Industries finding the
16 contractor liable for the unpaid wages described in subsection (1) of this section, the
17 complainant must deliver a certified copy of the judgment or final order to the board and to
18 the bond surety no later than the 30th day after the judgment or final order is entered to
19 be able to maintain the complaint and possibly receive payment from the bond of the con-
20 tractor.

21 (6)(a) Upon receipt of a timely delivered certified copy of a judgment or final order as
22 described in subsection (5) of this section, subject to paragraphs (b) to (d) of this subsection
23 the board shall issue a proposed order on the complaint in the amount of the judgment or
24 order together with any costs, interest and attorney fees awarded under the judgment, to
25 the extent that the judgment or order amount, costs, interest and fees are within the juris-
26 diction of the board.

27 (b) The board shall issue a proposed order as described in paragraph (a) of this subsection
28 if the judgment or final order includes determinations:

29 (A) That wages are owing to the complainant;

30 (B) That the complainant earned the wages while employed by a construction contractor;

31 (C) That the wages were earned within one year prior to the date on which a complaint
32 for the wages was filed with the board under subsection (1) of this section; and

33 (D) Whether the complaint arises from work described in ORS 701.139 (4), work described
34 in ORS 701.139 (5) or work that is not described in ORS 701.139 (4) or (5).

35 (c) If a judgment or final order omits any of the determinations described in paragraph
36 (b) of this subsection, the board shall make the determinations that were omitted from the
37 judgment or final order.

38 (d) If a judgment or final order is issued as described in this subsection, the board is
39 limited to determining whether a complaint comes within the jurisdiction of the board and
40 is subject to payment by the surety.

41 (7) The board shall issue any proposed order in a form that indicates the surety's maxi-
42 mum liability to the complainant. If a hearing is not requested within the time set forth in
43 the proposed order, the proposed order becomes final without any further action by the
44 board. If a hearing is requested, unless review of an issue is precluded under subsection (6)
45 of this section, the board may determine:

1 (a) Whether the complaint was timely filed with the board as provided in ORS 701.143.

2 (b) Whether the complaint is for work subject to this chapter.

3 (c) The extent of the surety's liability to the complainant.

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

8 (a) Suspend the license of the contractor; and

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

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

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

15 701.005. As used in this chapter:

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

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

18 (a) Commercial general contractor level 1;

19 (b) Commercial specialty contractor level 1;

20 (c) Commercial general contractor level 2;

21 (d) Commercial specialty contractor level 2; or

22 (e) Commercial developer.

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

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

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

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

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

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

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

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

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

42 (d) A community college district, as defined in ORS 341.005, that permits students to construct
43 a residential structure or small commercial structure as an educational experience to learn building
44 techniques and sells the completed structure.

45 (e) A person except a landscape contracting business, nurseryman, gardener or person engaged

1 in the commercial harvest of forest products, that is engaged as an independent contractor to re-
2 move trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

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

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

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

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

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

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

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

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

20 (B) 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 (C) Modular home constructed off-site;

24 (D) Manufactured dwelling; or

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

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

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

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

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

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

37 [(10)] **(11)** “Key employee” means an employee or owner of a contractor who is a corporate of-
38 ficer, manager, superintendent, foreperson or lead person or any other employee the board identifies
39 by rule.

40 [(11)] **(12)** “Large commercial structure” means a structure that is not a residential structure
41 or small commercial structure.

42 [(12)] **(13)** “Officer” means any of the following persons:

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

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

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

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

2 (e) A trustee.

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

6 [(13)] (14) "Residential contractor" means a licensed contractor that holds an endorsement as
7 a:

8 (a) Residential general contractor;

9 (b) Residential specialty contractor;

10 (c) Residential limited contractor; or

11 (d) Residential developer.

12 [(14)] (15) "Residential developer" means a developer of property that is zoned for or intended
13 for use compatible with a residential or small commercial structure.

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

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

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

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

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

21 (E) A manufactured dwelling; or

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

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

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

26 (B) Transient lodging;

27 (C) A residential school or residence hall;

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

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

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

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

34 (H) A nursing home;

35 (I) A hospital; or

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

37 [(16)] (17) "Responsible managing individual" means an individual who:

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

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

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

43 (B) Demonstrated experience the board requires by rule; or

44 (C) Complied with the licensing requirements of ORS 446.395.

45 [(17)] (18) "Small commercial structure" means:

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

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

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

11 [(18)] (19) "Specialty contractor" means a contractor who performs work on a structure, project,
12 development or improvement and whose operations as such do not fall within the definition of
13 "general contractor." "Specialty contractor" includes a person who performs work regulated under
14 ORS 446.395.

15 [(19)] (20) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of
16 attached units in which:

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

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

19 **SECTION 5.** ORS 701.106 is amended to read:

20 701.106. (1) A contractor that violates or fails to comply with any of the following provisions
21 or any rules adopted under those provisions is subject to the suspension of, revocation of, refusal
22 to issue or refusal to renew a license, imposition of a civil penalty under ORS 701.992, or a combi-
23 nation of those sanctions:

24 (a) ORS 87.007 (2).

25 (b) ORS chapter 316 or 317.

26 (c) ORS 446.225 to 446.285.

27 (d) ORS 446.395 to 446.420.

28 (e) ORS 447.010 to 447.156.

29 (f) ORS chapter 455.

30 (g) ORS 460.005 to 460.175.

31 (h) ORS 479.510 to 479.945.

32 (i) ORS 480.510 to 480.670.

33 (j) **ORS 652.140.**

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

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

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

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

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

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

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

41 **SECTION 6.** ORS 701.109 is amended to read:

42 701.109. (1) As used in this section, "judgment" means:

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

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

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

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

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

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

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

17 **SECTION 7.** ORS 701.139 is amended to read:

18 701.139. The Construction Contractors Board may determine the validity of a complaint de-
19 scribed in ORS 701.140 filed against a licensed contractor. A person must file the complaint within
20 the applicable time limitation described in ORS 701.143. The complaint must be filed and resolved
21 as follows:

22 (1) A complaint against a residential contractor that is not also endorsed as a commercial con-
23 tractor involving work on a residential or small commercial structure or an appurtenance to a res-
24 idential or small commercial structure must be resolved as provided in ORS 701.145.

25 (2) A complaint against a commercial contractor that is not also endorsed as a residential con-
26 tractor involving work on a small commercial or large commercial structure or an appurtenance to
27 a small commercial or large commercial structure must be resolved as provided in ORS 701.146.

28 (3) A complaint against a contractor that is endorsed as both a residential contractor and a
29 commercial contractor:

30 (a) Involving work on a residential structure or an appurtenance to a residential structure must
31 be resolved as provided under ORS 701.145.

32 (b) Involving work on a small commercial structure or an appurtenance to a small commercial
33 structure may be resolved as provided in ORS 701.145 or 701.146, at the complainant's election.

34 (c) Involving work on a large commercial structure or an appurtenance to a large commercial
35 structure must be resolved as provided in ORS 701.146.

36 **(4) Notwithstanding subsections (1) to (3) of this section, a complaint for unpaid wages**
37 **against a residential contractor that is not also endorsed as a commercial contractor in-**
38 **volving work on a residential or small commercial structure or an appurtenance to a resi-**
39 **dential or small commercial structure must be resolved as provided in section 2 of this 2011**
40 **Act.**

41 **(5) Notwithstanding subsections (1) to (3) of this section, a complaint for unpaid wages**
42 **against a contractor that is endorsed as both a residential contractor and a commercial**
43 **contractor involving work on a residential structure or an appurtenance to a residential**
44 **structure must be resolved as provided under section 2 of this 2011 Act.**

45 *[(4)]* **(6) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS**

1 701.148, with prior agreement of the complainant and the licensed contractor, a complaint may be
2 resolved by the board through binding arbitration under ORS 701.148.

3 **SECTION 8.** ORS 701.140 is amended to read:

4 701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the
5 performance, of work that requires a contractor license issued by the Construction Contractors
6 Board. The complaint must be of one or more of the following types:

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

9 (a) Negligent work.

10 (b) Improper work.

11 (c) Breach of contract.

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

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

19 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to
20 87.093 because the contractor failed to pay the person claiming the lien for that person's contribu-
21 tion toward completion of the improvement; and

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

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

24 (a) Negligent work;

25 (b) Improper work; or

26 (c) Breach of contract.

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

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

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

33 **SECTION 9.** ORS 701.153 is amended to read:

34 701.153. (1) If an order of the Construction Contractors Board that determines a complaint under
35 ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the
36 date the order becomes final, the complainant may file the order with the county clerk in any county
37 of this state.

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

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

44 (A) Board orders as a result of complaints against a residential contractor by the owner of a
45 residential or small commercial structure have payment priority to the full extent of the bond over

1 all other types of complaints.

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

6 (b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent
7 90-day periods begin on the date the first complaint is filed with the board after the close of the
8 preceding 90-day period.

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

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

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

20 **SECTION 10. Section 2 of this 2011 Act applies to complaints filed with the Construction**
21 **Contractors Board on or after the effective date of this 2011 Act.**

22 **SECTION 11. Section 3 of this 2011 Act applies to judgments that become final by oper-**
23 **ation of law before, on or after the effective date of this 2011 Act.**

24 **SECTION 12. The amendments to ORS 701.106 by section 5 of this 2011 Act apply to vio-**
25 **lations or failures to comply with ORS 652.140 or 653.010 to 653.261 that occur before, on or**
26 **after the effective date of this 2011 Act.**

27 **SECTION 13. The amendments to ORS 701.109 by section 6 of this 2011 Act apply to**
28 **judgments recorded on or after the effective date of this 2011 Act.**

29 **SECTION 14. The amendments to ORS 701.153 by section 9 of this 2011 Act do not apply**
30 **for the purpose of increasing the amount payable from a bond for nonowner complaints or**
31 **for costs, interest and attorney fees pursuant to a notice and order issued by the Con-**
32 **struction Contractors Board before the effective date of this 2011 Act.**

33