

House Bill 2148

Sponsored by Representative JOHNSON; Representative BARKER (Presession 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**.

Allows construction contractor or subcontractor to post retainage bond as substitute for moneys being withheld as retainage.

A BILL FOR AN ACT

1 Relating to retainage bonds; creating new provisions; and amending ORS 701.410 and 701.420.

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

3 **SECTION 1. (1) A contractor or subcontractor may, before commencing performance on**
4 **a construction project, execute and deliver a good and sufficient bond to an owner, contrac-**
5 **tor or subcontractor in the amount of any retainage the owner, contractor or subcontractor**
6 **would be authorized under ORS 701.420 to withhold from the contractor or subcontractor**
7 **based on the contract price. After commencing performance, a contractor or subcontractor**
8 **may execute and deliver a good and sufficient bond to an owner, contractor or subcontractor**
9 **in the amount of any retainage on the contract price that has not been paid to the contrac-**
10 **tor or subcontractor by the owner, contractor or subcontractor.**

11
12 **(2) A bond under this section must be payable for claims and liens, in the same amounts,**
13 **manner and priority that the claims and liens would be payable from moneys withheld as**
14 **retainage. The bond must be payable for claims made prior to 30 days after the contractor**
15 **or subcontractor completes work under the contract and the work is accepted by the owner.**
16 **The bond must be issued by one or more corporate sureties authorized to do business in this**
17 **state.**

18 **(3) If a contractor or subcontractor delivers a bond to an owner, contractor or subcon-**
19 **tractor under this section before the contractor or subcontractor commences work, the**
20 **owner, contractor or subcontractor must accept the bond as security in lieu of withholding**
21 **retainage from the amounts payable to the contractor or subcontractor. If the contractor**
22 **or subcontractor delivers the bond after commencing work, the owner, contractor or sub-**
23 **contractor receiving the bond shall immediately release any amounts earned by the con-**
24 **tractor or subcontractor that have been withheld as retainage and shall cease further**
25 **withholdings of retainage from amounts due the contractor or subcontractor.**

26 **(4) If a contractor or subcontractor delivers a bond under this section, and later executes**
27 **and delivers a performance bond under ORS 701.430, the contractor or subcontractor may**
28 **reduce the amount of the performance bond by the amount of the bond executed and deliv-**
29 **ered under this section.**

30 **(5) A bond described in this section shall expire 30 days after the contractor or subcon-**
31 **tractor completes work under the contract and the work is accepted by the owner.**

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 **(6) This section does not apply to a public contract described in ORS 701.435.**

2 **SECTION 2.** ORS 701.420 is amended to read:

3 701.420. (1) Partial payment is allowed and may be made on contracts for construction and home
 4 improvement. **Except as otherwise provided in ORS 701.430, 701.435 or section 1 of this 2017**
 5 **Act**, an owner, contractor or subcontractor may withhold as retainage an amount equal to not more
 6 than five percent of the contract price of the work completed. Partial payment allowed under this
 7 subsection is not acceptance or approval of some of the work or a waiver of defects in the work.

8 (2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per
 9 month on the final payment due the contractor or subcontractor. The interest shall commence 30
 10 days after the contractor or subcontractor has completed and the owner has accepted the work
 11 under the contract for construction for which the final payment is due. The interest shall run until
 12 the date when final payment is tendered to the contractor or subcontractor. When the contractor
 13 or subcontractor considers the work that the contractor or subcontractor is contracted to perform
 14 to be complete, the contractor or subcontractor shall notify the party to whom the contractor or
 15 subcontractor is responsible for performing the construction work under the contract. The party
 16 shall, within 15 days after receiving the notice, either accept the work or notify the contractor or
 17 subcontractor of work yet to be performed under the contract. If the party does not accept the work
 18 or does not notify the contractor or subcontractor of work yet to be performed within the time al-
 19 lowed, the interest required under this subsection shall commence 30 days after the end of the
 20 15-day period.

21 (3) *[When a contractor pays a subcontractor in full, including the amount the contractor withheld*
 22 *as retainage, the owner with whom the contractor has the contract shall pay the contractor, out of the*
 23 *amount that the owner withheld from the contractor as retainage, a sum equal to the amount of*
 24 *retainage that the contractor paid the subcontractor.]* **If a contractor pays a subcontractor in full**
 25 **including any retainage withheld by the contractor, and the owner has withheld retainage**
 26 **from the contractor, the owner shall pay the contractor out of the retainage withheld by the**
 27 **owner an amount equal to five percent of the full amount that the contractor paid the sub-**
 28 **contractor.** The contractor shall notify the owner when the contractor pays a subcontractor in full
 29 under this section and the owner shall, within 15 days after receiving the notice, pay the contractor
 30 the amount due the contractor under this subsection. Interest on the amount due the contractor at
 31 the rate of one percent per month shall commence 30 days after the owner receives notice of full
 32 payment to the subcontractor.

33 **SECTION 3.** ORS 701.410 is amended to read:

34 701.410. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440 **and**
 35 **section 1 of this 2017 Act:**

36 (a) "Construction" means:

37 (A) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in
 38 and otherwise preparing land for the making and placement of a building, structure or superstruc-
 39 ture;

40 (B) Creating or making a building, structure or superstructure; and

41 (C) Altering, partially constructing and doing repairs in and upon a building, structure or
 42 superstructure.

43 (b) "Contractor" means a person that contracts with an owner on predetermined terms to be
 44 responsible for performing all or part of a job of construction in accordance with established spec-
 45 ifications or plans, and that retains control of the means, method and manner of accomplishing the

1 desired result.

2 (c) "Owner" means a person that is or claims to be the owner in fee or a lesser estate of the
3 land, building, structure or superstructure on which construction is performed and that enters into
4 an agreement with a contractor for the construction.

5 (d) "Subcontractor" means a person that contracts with a contractor or another subcontractor
6 on predetermined terms to be responsible for performing all or part of a job of construction in ac-
7 cordance with established specifications or plans.

8 (2) As used in ORS 701.410, 701.420, 701.430, 701.435 and 701.440 **and section 1 of this 2017**
9 **Act**, "retainage" means the difference between the amount a contractor or subcontractor earns un-
10 der a construction contract and the amount the owner pays on the contract to the contractor, the
11 amount the contractor pays on the contract to the subcontractor or the amount the subcontractor
12 pays on the contract to another subcontractor.

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