

DRAFT

SUMMARY

Digest: Requires state agencies to accept surety bonds from people who perform construction work for the state, instead of holding onto some of the money the agencies owe for the work, in order to make sure the work is done correctly. Gives a form for the surety bond. (Flesch Readability Score: 60.5).

Requires a contracting agency to accept from contractors surety bonds in lieu of retainage for construction projects and public improvement contracts. Specifies requirements for submitting surety bonds. Specifies relations between a contractor and a subcontractor when the contractor submits a surety bond on behalf of the subcontractor.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to submitting surety bonds in lieu of retainage; creating new pro-
3 visions; amending ORS 279C.560, 279C.570, 701.420 and 701.435; and de-
4 claring an emergency.

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

6 **SECTION 1.** ORS 279C.560 is amended to read:

7 279C.560. (1)(a) [*Unless a contracting agency that reserves an amount as*
8 *retainage under ORS 279C.570 (7) finds in writing that accepting a bond or*
9 *instrument described in paragraph (a) or (b) of this subsection poses an ex-*
10 *traordinary risk that is not typically associated with the bond or instrument,*
11 *the]* **A contractor may submit and a contracting agency shall accept**
12 **from a contractor** in lieu of withholding moneys [*from payment shall accept*
13 *from a contractor]* **for all or a portion of the retainage required under a**
14 **public contract:**

15 [(a)] **(A)** Bonds, securities or other instruments of a character described

1 in subsection (6) of this section that are deposited as provided in subsection
2 (4) of this section; or

3 [(b)] **(B)** A surety bond deposited as provided in subsection (7) of this
4 section.

5 **(b) A surety bond that a contractor submits under this section must**
6 **be executed by a surety bonding company that is authorized to trans-**
7 **act surety business in this state and may not be a surety obligation**
8 **of an individual.**

9 **(c) A contracting agency may reject bonds, securities or other in-**
10 **struments that a contractor submits under paragraph (a)(A) of this**
11 **subsection or a surety bond that the contractor submits under para-**
12 **graph (a)(B) of this subsection only if the contracting agency first**
13 **finds in writing good cause for the rejection that is based on unique**
14 **project circumstances.**

15 (2) A contracting agency that holds moneys as retainage under ORS
16 279C.570 (7) shall:

17 (a) Hold the moneys in a fund and pay the moneys to the contractor in
18 accordance with ORS 279C.570; or

19 (b) At the election of the contractor, pay the moneys to the contractor in
20 accordance with subsection (4) or (5) of this section and in a manner au-
21 thorized by the Director of the Oregon Department of Administrative Ser-
22 vices.

23 (3)(a) If [the] a contracting agency incurs additional costs as a result of
24 the **contractor's** exercise of an option described in subsection (1), (4) or (5)
25 of this section, the contracting agency may recover the **additional** costs from
26 the contractor by reducing the final payment. As work on the contract
27 progresses, the contracting agency shall, upon demand, inform the contractor
28 of all accrued costs.

29 **(b) Except as provided in subsection (8) of this section, a contractor**
30 **shall bear additional costs that arise from the contractor's exercise**
31 **of an option described in subsection (1), (4) or (5) of this section after**

1 **the date on which the contractor submits a bid or proposal to the**
2 **contracting agency. Such additional costs are not reimbursable project**
3 **costs and the contracting agency is not responsible for paying the**
4 **costs.**

5 (4) [*The*] **A contractor may deposit bonds, securities or other instruments**
6 **with [*the*] a contracting agency or in a bank or [*trust company*] other fi-**
7 **nancial institution** for the contracting agency to hold for the contracting
8 agency's benefit in lieu of moneys held as retainage. If [*the contracting*
9 *agency accepts*] **a contractor submits** bonds, securities or other instruments
10 [*deposited*] as provided in this subsection, the contracting agency shall re-
11 duce the moneys held as retainage in an amount equal to the value of the
12 bonds, securities and other instruments and pay the amount of the reduction
13 to the contractor in accordance with ORS 279C.570. Interest or earnings on
14 the bonds, securities or other instruments [*shall*] accrue to the contractor.

15 (5) If the contractor elects, the contracting agency shall deposit the
16 retainage as accumulated in an interest-bearing account in a bank[, *savings*
17 *bank, trust company or savings association*] **or other financial institution**
18 for the benefit of the contracting agency. [*When*] **If** the contracting agency
19 is a state contracting agency, the account must be established through the
20 State Treasurer. Earnings on the account accrue to the contractor.

21 (6) Bonds, securities and other instruments deposited or acquired in lieu
22 of retainage, as permitted by this section, must be of a character approved
23 by the Director of the Oregon Department of Administrative Services, in-
24 cluding but not limited to:

25 (a) Bills, certificates, notes or bonds of the United States.

26 (b) Other obligations of the United States or agencies of the United
27 States.

28 (c) Obligations of a corporation wholly owned by the federal government.

29 (d) Indebtedness of the Federal National Mortgage Association.

30 (e) General obligation bonds of the State of Oregon or a political subdi-
31 vision of the State of Oregon.

1 (f) Irrevocable letters of credit issued by an insured institution, as defined
 2 in ORS 706.008.

3 (7) *[The]* **A contractor***[, with the approval of the contracting agency,]* may
 4 deposit a surety bond for all or any portion of the amount of funds retained,
 5 or to be retained, by the contracting agency in *[a form acceptable to the*
 6 *contracting agency]* **substantially the form specified in ORS 701.435 (4).**
 7 **The surety** bond and any proceeds of the **surety** bond must be made subject
 8 to all claims and liens and in the same manner and priority *[as set forth]*
 9 **specified** for retainage under ORS 279C.550 to 279C.570 and 279C.600 to
 10 279C.625. The contracting agency shall reduce the moneys the contracting
 11 agency holds as retainage in an amount equal to the value of the **surety**
 12 bond and pay the amount of the reduction to the contractor in accordance
 13 with ORS 279C.570. *[Whenever a contracting agency accepts a surety bond*
 14 *from a contractor in lieu of retainage, the contractor shall accept like bonds*
 15 *from a subcontractor or supplier from which the contractor has retainage. The*
 16 *contractor shall then reduce the moneys the contractor holds as retainage in*
 17 *an amount equal to the value of the bond and pay the amount of the reduction*
 18 *to the subcontractor or supplier.]*

19 **(8)(a) When a contracting agency accepts a surety bond in lieu of**
 20 **retainage from a contractor under this section, the contractor shall**
 21 **accept surety bonds from subcontractors or suppliers from which the**
 22 **contractor has withheld retainage. At any time before final payment**
 23 **on a public improvement contract, a subcontractor may submit a**
 24 **surety bond to a contractor and may request that the contractor on**
 25 **the public improvement contract submit, in the manner provided in**
 26 **subsection (7) of this section, a surety bond to the contracting agency**
 27 **for the portion of the contractor’s retainage that pertains to the sub-**
 28 **contractor. The surety bond the subcontractor provides to the con-**
 29 **tractor must meet the requirements set forth in subsection (1)(b) of**
 30 **this section. When a contractor at a subcontractor’s request obtains**
 31 **and submits to the contracting agency a surety bond under this sub-**

1 section, the contractor may withhold from payments to the subcon-
2 tractor an amount equivalent to the portion of the subcontractor's
3 surety bond premium for which the subcontractor is responsible.

4 (b) Within 30 days after a subcontractor's request under paragraph
5 (a) of this subsection, the contractor shall provide, and the contracting
6 agency shall accept, a surety bond that meets the requirements set
7 forth in subsection (1)(b) of this section unless:

8 (A) The contracting agency finds good cause in writing to reject the
9 surety bond based on unique project circumstances;

10 (B) The surety bond is not commercially available; or

11 (C) The subcontractor refuses to pay to the contractor the
12 subcontractor's portion of the surety bond premium or refuses to
13 provide the contractor with a surety bond that meets the requirements
14 of subsection (1)(b) of this section.

15 (c) A surety bond the contractor submits under this subsection, and
16 any proceeds from the surety bond, must be made subject to all claims
17 and liens and in the same manner and priority specified for retainage
18 under ORS 279C.550 to 279C.570.

19 (d) A contracting agency shall, within 30 days after receiving a
20 surety bond under this subsection, release to the contractor an
21 amount the contracting agency holds as retainage that is equivalent
22 to the amount the contractor submitted as a surety bond.

23 (e) A contractor must, within 30 days after receiving a surety bond
24 from a subcontractor or supplier, release to the subcontractor or
25 supplier the amount the contractor holds as retainage that is equiv-
26 alent to the amount the subcontractor or supplier submitted as the
27 surety bond.

28 (9) A surety bond under this section must be in substantially the
29 form specified in ORS 701.435 (4).

30 **SECTION 2.** ORS 279C.570 is amended to read:

31 279C.570. (1) *[It is]* The policy of the State of Oregon is that all payments

1 due on a public improvement contract and owed by a contracting agency
2 [*shall*] **must** be paid promptly. No contracting agency is exempt from the
3 provisions of this section.

4 (2) Contracting agencies shall make progress payments on the contract
5 monthly as work progresses on a public improvement contract. Payments
6 shall be based upon estimates of work completed that are approved by the
7 contracting agency. A progress payment is not considered acceptance or ap-
8 proval of any work or waiver of any defects therein. The contracting agency
9 shall pay to the contractor interest on the progress payment, not including
10 retainage, due the contractor. The interest shall commence 30 days after re-
11 ceipt of the invoice from the contractor or 15 days after the payment is ap-
12 proved by the contracting agency, whichever is the earlier date. The rate of
13 interest charged to the contracting agency on the amount due shall equal
14 three times the discount rate on 90-day commercial paper in effect at the
15 Federal Reserve Bank in the Federal Reserve district that includes Oregon
16 on the date that is 30 days after receipt of the invoice from the contractor
17 or 15 days after the payment is approved by the contracting agency, which-
18 ever is the earlier date, but the rate of interest may not exceed 30 percent.
19 [*If the contract price exceeds \$500,000, the contracting agency shall place*
20 *amounts deducted as retainage into an interest-bearing escrow account. Interest*
21 *on the retainage amount accrues from the date the payment request is approved*
22 *until the date the retainage is paid to the contractor to which it is due.*]

23 (3) Interest shall be paid automatically when payments become overdue.
24 The contracting agency shall document, calculate and pay any interest due
25 when payment is made on the principal. Interest payments shall accompany
26 payment of net due on public improvement contracts. The contracting agency
27 may not require the contractor to petition, invoice, bill or wait additional
28 days to receive interest due.

29 (4) [*When*] **If** an invoice is filled out incorrectly, [*when*] **if** there is any
30 defect or impropriety in any submitted invoice or [*when*] **if** there is a good
31 faith dispute, the contracting agency shall so notify the contractor within

1 15 days stating the reason or reasons the invoice is defective or improper
2 or the reasons for the dispute. A defective or improper invoice, if corrected
3 by the contractor within seven days of being notified by the contracting
4 agency, may not cause a payment to be made later than specified in this
5 section unless interest is also paid.

6 (5) If requested in writing by a first-tier subcontractor, the contractor,
7 within 10 days after receiving the request, shall send to the first-tier sub-
8 contractor a copy of that portion of any invoice, request for payment sub-
9 mitted to the contracting agency or pay document provided by the
10 contracting agency to the contractor specifically related to any labor or
11 materials supplied by the first-tier subcontractor.

12 (6) Payment of interest may be postponed when payment on the principal
13 is delayed because of disagreement between the contracting agency and the
14 contractor. Whenever a contractor brings formal administrative or judicial
15 action to collect interest due under this section, the prevailing party is en-
16 titled to costs and reasonable attorney fees.

17 (7) A contracting agency may reserve as retainage from any progress
18 payment on a public improvement contract an amount not to exceed five
19 percent of the payment. As work progresses, a contracting agency may re-
20 duce the amount of the retainage and the contracting agency may eliminate
21 retainage on any remaining monthly contract payments after 50 percent of
22 the work under the contract is completed if, in the contracting agency's
23 opinion, such work is progressing satisfactorily. Elimination or reduction of
24 retainage shall be allowed only upon written application by the contractor,
25 and the application shall include written approval of the contractor's surety.
26 However, when the contract work is 97.5 percent completed the contracting
27 agency may, at the contracting agency's discretion and without application
28 by the contractor, reduce the retained amount to 100 percent of the value
29 of the contract work remaining to be done. Upon receipt of a written appli-
30 cation by the contractor, the contracting agency shall respond in writing
31 within a reasonable time.

1 (8) The retainage held by a contracting agency [*shall*] **must** be included
2 in and paid to the contractor as part of the final payment of the contract
3 price. The contracting agency shall pay to the contractor interest at the rate
4 of 1.5 percent per month on the final payment due the contractor, interest
5 to commence 30 days after the work under the contract has been completed
6 and accepted and to run until the date when the final payment is tendered
7 to the contractor. The contractor shall notify the contracting agency in
8 writing when the contractor considers the work complete and the contracting
9 agency shall, within 15 days after receiving the written notice, either accept
10 the work or notify the contractor of work yet to be performed on the con-
11 tract. If the contracting agency does not, within the time allowed, notify the
12 contractor of work yet to be performed to fulfill contractual obligations, the
13 interest provided by this subsection shall commence to run 30 days after the
14 end of the 15-day period.

15 (9)(a) The contracting agency shall pay, upon settlement or judgment in
16 favor of the contractor regarding any dispute as to the compensation due a
17 contractor for work performed under the terms of a public improvement
18 contract, the amount due plus interest at the rate of two times the discount
19 rate, but not to exceed 30 percent, on 90-day commercial paper in effect at
20 the Federal Reserve Bank in the Federal Reserve district that includes
21 Oregon on the date of the settlement or judgment, and accruing from the
22 later of:

23 (A) The due date of any progress payment received under the contract for
24 the period in which such work was performed; or

25 (B) Thirty days after the date on which the claim for the payment under
26 dispute was presented to the contracting agency by the contractor in writing
27 or in accordance with applicable provisions of the contract.

28 (b) Interest shall be added to and not made a part of the settlement or
29 judgment.

30 **SECTION 3.** ORS 701.420 is amended to read:

31 701.420. (1) Partial payment is allowed and may be made on contracts for

1 construction and home improvement. An owner, contractor or subcontractor
2 may withhold as retainage an amount equal to not more than five percent
3 of the contract price of the work completed. Partial payment allowed under
4 this subsection is not acceptance or approval of some of the work or a waiver
5 of defects in the work.

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

22 *[(b) If the contract price exceeds \$500,000, the owner, contractor or subcon-*
23 *tractor shall place amounts withheld as retainage into an interest-bearing*
24 *escrow account. Interest on the retainage amount accrues from the date the*
25 *payment request is approved until the date the retainage is paid to the con-*
26 *tractor or subcontractor to which it is due.]*

27 (3) When a contractor pays a subcontractor in full, including the amount
28 the contractor withheld as retainage, the owner with whom the contractor
29 has the contract shall pay the contractor, out of the amount that the owner
30 withheld from the contractor as retainage, a sum equal to the amount of
31 retainage that the contractor paid the subcontractor. The contractor shall

1 notify the owner when the contractor pays a subcontractor in full under this
2 section and the owner shall, within 15 days after receiving the notice, pay
3 the contractor the amount due the contractor under this subsection. Interest
4 on the amount due the contractor at the rate of one percent per month shall
5 commence 30 days after the owner receives notice of full payment to the
6 subcontractor.

7 **SECTION 4.** ORS 701.435 is amended to read:

8 701.435. *[(1) When a contractor on a public contract deposits bonds, secu-*
9 *rities or other instruments under ORS 279C.560 (4), if the subcontract price*
10 *exceeds \$50,000 and constitutes more than 10 percent of the cost of the public*
11 *contract, a subcontractor on the public contract may deposit bonds, securities*
12 *or other instruments with the contractor or in a bank or trust company for the*
13 *contractor to hold for the contractor's benefit in lieu of moneys held as*
14 *retainage. If the contractor accepts the bonds, securities or other instruments*
15 *deposited as provided in this subsection, the contractor shall reduce the moneys*
16 *held as retainage in an amount equal to the value of the bonds, securities and*
17 *other instruments and pay the amount of the reduction to the subcontractor in*
18 *accordance with ORS 701.420 and 701.430. Interest or earnings on the bonds,*
19 *securities or other instruments shall accrue to the subcontractor.]*

20 **(1)(a) A contractor that performs work on a large commercial**
21 **structure or under a public improvement contract may submit to the**
22 **project owner and any lender, and the owner or lender shall accept, a**
23 **surety bond in lieu of all or any portion of the retainage required for**
24 **the large commercial structure or under the public improvement con-**
25 **tract.**

26 **(b) When an owner or lender accepts a surety bond in lieu of**
27 **retainage from a contractor under this section, the contractor shall**
28 **accept surety bonds from subcontractors or suppliers from which the**
29 **contractor has withheld retainage. At any time before final payment**
30 **for work on a large commercial structure or under a public improve-**
31 **ment contract, a subcontractor may submit a surety bond to the con-**

1 tractor on the large commercial structure or under the public
2 improvement contract and request that the contractor submit a surety
3 bond to the project owner and lender for the portion of the
4 contractor's retainage that pertains to the subcontractor. The surety
5 bond must be from a surety bonding company that is authorized to
6 transact business in this state and may not be a surety obligation of
7 an individual. The surety bond the subcontractor submits to the con-
8 tractor must be in substantially the form specified in subsection (4)
9 of this section. When a contractor at the subcontractor's request ob-
10 tains and submits to the owner or lender a surety bond under this
11 subsection, the contractor may withhold from payments to the sub-
12 contractor an amount equivalent to the portion of the contractor's
13 surety bond premium for which the subcontractor is responsible.

14 (c) Within 30 days after a subcontractor's request under paragraph
15 (b) of this subsection, the contractor shall provide, and the owner and
16 lender shall accept, a surety bond that meets the requirements set
17 forth in this subsection unless:

18 (A) The surety bond is not commercially available; or

19 (B) The subcontractor refuses to pay to the contractor the
20 subcontractor's portion of the surety bond premium or refuses to
21 provide the contractor with a surety bond that meets the requirements
22 of this subsection.

23 (d) A surety bond the contractor submits under this subsection, and
24 any proceeds from the surety bond, are subject to all claims and liens
25 and in the same manner and priority specified for retainage under this
26 section and ORS 279C.550 to 279C.570, 701.410, 701.420, 701.430 and
27 701.440.

28 (e) An owner and any lender shall, within 30 days after receiving a
29 surety bond under this subsection, release to the contractor an
30 amount the owner or lender holds as retainage that is equivalent to
31 the amount the contractor submitted as a surety bond.

1 **(f) The contractor must, within 30 days after receiving a surety**
 2 **bond from a subcontractor or supplier, reduce the amount the con-**
 3 **tractor holds as retainage in an amount equivalent to the amount the**
 4 **subcontractor or supplier submitted as a surety bond and shall pay the**
 5 **amount of the reduction to the subcontractor or supplier in accord-**
 6 **ance with ORS 701.420 and 701.430.**

7 (2) [*When a contractor on a public contract elects to have the public con-*
 8 *tracting agency deposit the accumulated retainage in an interest-bearing ac-*
 9 *count under ORS 279C.560 (5),*] **If a contractor or a subcontractor**
 10 **performing work on a large commercial structure or under a public**
 11 **improvement contract does not deposit a surety bond in lieu of**
 12 **retainage, the contractor may elect to have the project owner or con-**
 13 **tracting agency deposit accumulated retainage in an interest-bearing**
 14 **account with a bank or other financial institution or pay interest on**
 15 **the accumulated retainage at the rate of two percent plus the discount**
 16 **rate on 90-day commercial paper that is in effect at the Federal Re-**
 17 **serve Bank in the Federal Reserve district that includes this state on**
 18 **the date that the retainage is paid. Subject to subsection (3) of this**
 19 **section, if the contractor elects to have accumulated retainage pay**
 20 **interest, the contractor, within 30 days following payment of the final**
 21 **amount due for construction of the project or public improvement, shall pay**
 22 **to each subcontractor [who] that performed work on the construction the**
 23 **subcontractor’s proportional share of the interest earnings that accrued to**
 24 **the contractor as a result of the election. A subcontractor’s share of the total**
 25 **amount of interest earnings under this subsection [shall] must be determined**
 26 **by the proportion that the amount of retainage withheld from the subcon-**
 27 **tractor bears to the amount of retainage withheld from the contractor and**
 28 **the length of time the retainage was withheld from the subcontractor. A**
 29 **share of the interest earnings shall be paid to a subcontractor under this**
 30 **subsection only when:**

31 (a) Retainage is withheld from the subcontractor for more than 60 days

1 after the day on which the first partial payment was due the subcontractor
2 under the terms of the subcontract; and

3 (b) The amount of interest earnings due the subcontractor exceeds \$100.

4 (3) If [*the*] a contractor incurs additional costs as a result of the exercise
5 of an option described in subsection (1) or (2) of this section, the contractor
6 may recover the **additional** costs from the subcontractor by reducing the
7 final payment. As work on the subcontract progresses, the contractor shall,
8 upon demand, inform the subcontractor of all accrued additional costs.

9 [*(4) Bonds, securities and other instruments deposited or acquired in lieu*
10 *of retainage, as permitted by this section, must be of a character approved by*
11 *the Director of the Oregon Department of Administrative Services, including*
12 *but not limited to:*]

13 [*(a) Bills, certificates, notes or bonds of the United States.*]

14 [*(b) Other obligations of the United States or agencies of the United*
15 *States.*]

16 [*(c) Obligations of a corporation wholly owned by the federal government.*]

17 [*(d) Indebtedness of the Federal National Mortgage Association.*]

18 [*(e) General obligation bonds of the State of Oregon or a political subdivi-*
19 *sion of the State of Oregon.*]

20 [*(f) Irrevocable letters of credit issued by an insured institution, as defined*
21 *in ORS 706.008.*]

22 (4) A surety bond under this section and ORS 279C.560 must be in
23 substantially the following form:

24 _____

25

26 **RETAINAGE SURETY BOND**

27

28 **KNOW ALL BY THESE PRESENTS:** That _____, a
29 _____ authorized to do business in the State of Oregon, as
30 **Principal, and _____, a corporation organized and existing**
31 **under the laws of the State of _____ and authorized to**

1 transact the business of surety in the State of Oregon, as Surety, are
2 jointly and severally held and bound to _____ (“Obligee”)
3 and _____ (“Owner”), and their lenders, heirs, executors,
4 administrators, successors and assigns in the penal sum of
5 \$_____, plus _____ % (not more than five percent) of any
6 increases in the contract amount that may occur because of change
7 orders or increases in the quantities of or that addition of any new
8 item of work.

9

10 WHEREAS the Principal has executed a contract
11 for _____ with the Obligee; and

12

13 WHEREAS Oregon law allows the Obligee to withhold from the
14 Principal a sum equivalent to _____ % (not more than five percent)
15 from moneys the Principal earns on estimates or progress payments
16 during the progress of the work (“Earned Retained Funds”); and

17

18 WHEREAS the Principal has requested that the Obligee or Owner
19 accept a surety bond in lieu of Earned Retained Funds as allowed un-
20 der ORS 279C.560 or 701.435;

21

22 NOW, THEREFORE, this obligation is such that the Surety and the
23 Surety’s successors and assigns are held and bound to Obligee, Owner
24 and any lender, and to all beneficiaries for the sum set forth in the
25 first paragraph of this retainage surety bond. This surety bond and
26 any proceeds from this surety bond are subject to all claims and liens
27 by the Obligee against the Principal in the same manner and priority
28 as specified for retainage under ORS 279C.550 to 279C.570, 701.410,
29 701.420, 701.430, 701.435 and 701.440, as applicable. The condition of this
30 obligation is such that if the Principal satisfies all payment obligations
31 to any Obligee that may lawfully claim against project sums due to the

1 Principal and indemnify and hold the Obligee harmless from any and
2 all loss, costs and damages that the Obligee may sustain by release
3 of the retainage to the Principal or Surety, this obligation is null and
4 void if the Obligee notifies the Surety that the Obligee released the
5 obligation. The obligation otherwise remains in full force and effect.

6

7 IT IS HEREBY DECLARED AND AGREED that the Surety is liable
8 under this obligation in the same manner and to the same extent as
9 is Principal. The Surety will not be discharged or released from li-
10 ability for any act, omission or defense of any kind or nature that
11 would not also discharge the Principal.

12

13 IT IS HEREBY FURTHER DECLARED AND AGREED that this
14 obligation is binding upon and inures to the benefit of the Principal,
15 the Surety, the Obligee, the Owner, the lender and the beneficiaries
16 of this obligation and their respective heirs, executors, administrators,
17 successors and assigns.

18

19 SIGNED AND SEALED this _____ day of _____, 20____

20

21 Principal _____ Surety _____

22 Name _____ Name _____

23 Title _____ Title _____

24 Address _____ Address _____

25 City/State/Zip _____ City/State/Zip _____

26 Phone _____ Phone _____

27

28 SECTION 5. The amendments to ORS 279C.560, 279C.570, 701.420 and
29 701.435 by sections 1 to 4 of this 2024 Act apply to contracts into which
30 a contractor or subcontractor enters on and after the effective date
31 of this 2024 Act.

1 **SECTION 6. This 2024 Act being necessary for the immediate pres-**
2 **ervation of the public peace, health and safety, an emergency is de-**
3 **clared to exist, and this 2024 Act takes effect on its passage.**

4
