

B-Engrossed House Bill 4154

Ordered by the House February 21
Including House Amendments dated February 15 and February 21

Sponsored by Representative FAHEY (Pre-session 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.

Makes contractor liable for unpaid wages, including other benefit payment or contribution, of employee of subcontractor at any tier **after employee files wage claim and Commissioner of the Bureau of Labor and Industries makes determination that claim is valid but cannot be enforced against subcontractor.**

Prohibits commissioner from holding contractor liable if contractor has already paid subcontractor in full for services performed by subcontractor under contract before commissioner makes determination.

[Permits exclusive representative of collective bargaining unit to bring action against contractor on behalf of employee for unpaid wages.]

[Permits joint labor and management committee to bring action against contractor on behalf of employee for unpaid wages.]

[Requires subcontractor at any tier to provide certain information to contractor upon request.]

Requires contracts entered into between contractors and first-tier subcontractors or between first-tier subcontractors and subcontractor at any tier to include *[certain provisions]* **provision** to ensure timely payments of wages to employees.

[Allows contractor to pay unpaid wages to employee of subcontractor and to withhold payment to subcontractor in amount equal to amount of unpaid wages for subcontractor's failure to meet certain requirements.]

Directs contractor to pay to commissioner amount due to employee wage claimant.

Permits contractor to deduct from amount owed to subcontractor amount equal to unpaid wages and benefits owed to employee wage claimant.

Applies to contractors who enter into contract with subcontractor on or after January 1, 2019.

A BILL FOR AN ACT

1
2 Relating to wages of employees of subcontractors.

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

4 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS 652.310 to**
5 **652.414.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Construction" has the meaning given that term in ORS 701.410.

8 (b) "Contractor" has the meaning given that term in ORS 701.410.

9 (c) "Subcontractor" has the meaning given that term in ORS 701.410.

10 (2) Except as provided in subsection (3) of this section, when an employee of a subcon-
11 tractor at any tier files a wage claim under ORS chapter 652 and the Commissioner of the
12 Bureau of Labor and Industries determines that the claim is valid but cannot be enforced
13 against the subcontractor, the contractor who entered into a contract to use the services
14 of the subcontractor to perform construction work is liable to the employee wage claimant
15 in an amount equal to wages earned and unpaid, including any other benefit payments and
16 contributions owed as part of the employee's total compensation, and interest owed.

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 **(3) The commissioner may not hold the contractor liable under subsection (2) of this**
2 **section if, by the time the commissioner has determined that the wage claim is valid but**
3 **cannot be enforced against the subcontractor, the contractor has already paid the subcon-**
4 **tractor in full for the services performed by the subcontractor under the contract.**

5 **(4)(a) The commissioner may proceed under ORS 652.310 to 652.414 against the contractor**
6 **as if the contractor was the subcontractor who had employed the employee wage claimant**
7 **to enforce the liability prescribed by subsection (2) of this section.**

8 **(b) The contractor shall pay to the commissioner the amount due to the employee wage**
9 **claimant under a final order issued in the wage claim proceeding.**

10 **(c) The contractor may pay the amount of the claim from funds including, but not limited**
11 **to, funds held as retainage for construction work performed by the subcontractor under the**
12 **contract.**

13 **(d) Nothing in this section shall alter a contractor's obligation to timely pay a subcon-**
14 **tractor under ORS chapter 701, except that a contractor may deduct from the amount owed**
15 **to the subcontractor an amount equal to the unpaid wages and benefits described under**
16 **subsection (2) of this section.**

17 **(5) Nothing in this section creates a new right of action of an employee of a subcon-**
18 **tractor against a contractor.**

19 **(6)(a) The remedies and obligations provided in this section are in addition to any other**
20 **remedies and obligations otherwise provided by law, except that nothing in this section shall**
21 **be construed to impose liability on a contractor for anything other than unpaid wages, in-**
22 **cluding any benefit payments and contributions made as part of the employees total com-**
23 **ensation, and interest owed.**

24 **(b) Liability under this section does not extend to penalties or liquidated damages.**

25 **(7) This section does not apply to work performed under a public contract under ORS**
26 **279C.800 to 279C.870.**

27 **(8) Every contract entered into between a contractor and a first-tier subcontractor or**
28 **between a first-tier subcontractor and a subcontractor at any tier to use the services of a**
29 **subcontractor to perform construction work must include at a minimum a provision in which**
30 **the subcontractor agrees to make timely payments to employees of the subcontractor for**
31 **wages earned for services performed under the contract.**

32 **SECTION 3. Section 2 of this 2018 Act applies to contractors who entered into a contract**
33 **to use the services of a subcontractor to perform construction work on or after the effective**
34 **date of this 2018 Act.**