



The Agents' Advocate

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CCB Increases Bond Amount for Some Contractors

The Oregon Construction Contractors Board has issued a new temporary rule that increases bond amounts for some contractors. Here are the explanations and actual language of the rule:

“OAR 812-003-0175 is adopted to establish the responsible parties for past unresolved activity requiring an increased bond amount. Because consumers protected by the construction contractor laws may have inadequate protection from contractors previously associated with businesses with unpaid debts, and because ORS 701.102, as amended, may not adequately provide protection where inconsistent with federal bankruptcy law, the Board adopts this rule to require, under certain circumstances, increased bonds for contractors. This rule, authorized by ORS 701.085(8), provides immediately necessary consumer protection without imposing restrictions on contractor applicants and licensees that may be impermissible under federal bankruptcy law.”

“On January 1, 2006, new legislation expanded the authority of the Construction Contractors Board (Board) to deny licensure to applicants or licensees for past unresolved activities involving not only the applicants or the licensees but businesses with which they had been associated. See Or Laws ch 432, § 10. Shortly thereafter, the Board learned of a decision entered in a federal bankruptcy court that, if its reasoning were adopted in the Oregon federal district, would limit the consumer protection of ORS 701.102, as amended by Oregon Laws chapter 432, section 10. See *Lee v. Washington Dept. of Labor & Industries*, No. 04-40532 (WD Wash 2005). Because consumers protected by the construction contractor laws may have inadequate protection from contractors previously associated with businesses with unpaid debts, and because ORS 701.102, as amended, may not adequately provide protection where inconsistent with federal bankruptcy law, the Board adopts this rule to require, under certain circumstances, increased bonds for contractors. This rule, authorized by ORS 701.085(8), provides immediately necessary consumer protection without imposing restrictions on contractor applicants and licensees that may be impermissible under federal bankruptcy law.”

812-003-0175

Increased Bond Amounts, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond in an amount up to five times the amount required for the category of license under OAR 812-003-0170, if:

- (a) The business has unpaid debts under a final order or arbitration award of the board;
- (b) An owner or officer of the business has unpaid debts under a final order or arbitration award of the board; or
- (c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order or arbitration award of the board and such debt remains unpaid.

(2) For purposes of this rule, “owner” means an “owner” as defined in ORS 701.077 and OAR 812-002-0537.

(3) For purposes of this rule, “officer” means an “officer” as defined in OAR 812-002-0533.

(4) Debts due under a final order or arbitration award of the board include amounts not paid by a surety on owner or non-owner claims.

Insurance Division Contractor Data Call

The Division is in the process of issuing a voluntary data call to about 30 companies, including the top 20 contractor insurers, some surplus carriers, and some carriers active in the past who have scaled back construction coverage. The information (sans identifiers) will be forwarded to the consultant tasked with the insurance study related to construction claims. The call involves questions about construction defect and premises operations, ten year history, underwriting and exclusions. Some of the issues raised include: ISO does not isolate construction defect data as part of their stat plan; insurers generally don't have programming to isolate CD claims though early indications are that most have developed a way to at least monitor; insurers appear to be split in terms of using ISO codes vs. SIC classifications so aligning contractor categories will be more complicated; and, insurers vary how they define construction defect based on claim age.

Department of Revenue Offers Proposals

The Oregon Department of Revenue is proposing several changes that may affect some insurance carriers, primarily domestic. They include (1) averaging insurance company apportionment factors, and (2) calculation of the real estate income and apportionment factor (property factor). A recent tax court case has changed some of the dynamics of the discussion. It is Stonebridge Life Insurance Company v. Department of Revenue (see link). The department wants to include a remedy provision for the case. When the insurance lobby met with the department recently to discuss these issues, we learned that there may be some interest by others in considering the taxation of insurance issues as a whole.

<http://www.ojd.state.or.us/tax/docs>

Type "4705" in the search engine.

Public Commission on the Oregon Legislature

The 30-member Public Commission on the Oregon Legislature (PCOL) is discussing ways to make the legislature more effective. The PCOL Process Committee is considering possible changes in how the legislature works and when it meets. One idea is to make the State Senate a full-time, non-partisan body, with the House of Representatives remaining part-time and partisan. Voter approval of constitutional amendments would be required to implement this idea.

More pragmatic approaches under consideration include retiming legislative sessions, either on biennial or annual calendars. Among the options that are being discussed are starting regular sessions in April or May, in September, or in January of even-numbered years. Each of these alternatives would probably include an "organizational" session in odd-numbered Januaries for election of officers, committee appointments, bill referrals and other actions. While retiming sessions on a biennial schedule would not necessarily require voter approval, annual sessions would. Presently under the Oregon Constitution, a biennial session can be held at any time fixed by statute. But by meeting in January and recessing to a date certain, even the 2007 legislature would meet its constitutional obligations and could pilot an alternative schedule. For information about the Commission and its committees, go to www.leg.state.or.us/pcol/.

Signature Gathering on Credit Score Ban

Recent Elections Division reports show that funds for signature gathering efforts have been received by Bill Sizemore regarding Initiative #23, a credit score ban. This is a statutory change that requires 75,630 signatures.

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