

House Bill 2077

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for State Landscape Contractors Board, Office of Regulatory Streamlining of Department of Consumer and Business Services)

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**.

Exempts landscaping business subcontracting landscape project site feature construction to licensed construction contractor from construction contractor license requirement. Imposes special bonding and insurance qualifications on landscaping business claiming construction contractor licensing exemption for subcontracting of site feature construction work to construction contractor. Prohibits landscaping business from entering into contract for unlicensed subcontractor, contractor or landscaping business to perform landscaping work.

Exempts construction contractor subcontracting performance of construction project landscaping to licensed landscaping business from landscaping business license requirement. Prohibits construction contractor from entering into contract for unlicensed subcontractor, contractor or landscaping business to perform construction work.

A BILL FOR AN ACT

1
2 Relating to licensing requirements; creating new provisions; and amending ORS 671.540, 701.010 and
3 701.055.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 671.510 to**
6 **671.710.**

7 **SECTION 2. A landscaping business may not enter into a contract for any subcontractor,**
8 **contractor or other landscaping business to perform landscaping work unless the work is**
9 **within the scope of a license issued to the subcontractor, contractor or landscaping business**
10 **under ORS 671.510 to 671.710 or ORS chapter 701 or the subcontractor, contractor or busi-**
11 **ness is exempt from licensure under ORS 671.540 or 701.010.**

12 **SECTION 3. ORS 671.540 is amended to read:**

13 671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

14 (1) Any federal or state agency or any political subdivision performing landscaping work on
15 public property.

16 (2) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as provided
17 under ORS 671.310 to 671.459.

18 (3) Landscaping work performed by a landscape maintenance business if:

19 (a) The landscaping work is performed for a customer that in a calendar year receives primarily
20 landscape maintenance services from the business;

21 (b) The value of all labor, materials or other items supplied for landscaping work at a job site
22 does not exceed \$500 in a calendar year; and

23 (c) The landscaping work is of a casual, minor or inconsequential nature, as those terms are
24 defined by the State Landscape Contractors Board by rule.

25 (4) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by

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 a person or business licensed with the Construction Contractors Board.

2 (5) Rough grading of plots and areas of land performed in conjunction with new or remodeling
3 construction if performed by a person or business licensed with the Construction Contractors Board.

4 (6) Any owner of property who contracts for landscaping work to be performed by a person li-
5 censed under ORS 671.560. The exception provided by this subsection does not apply to a person
6 who, in pursuit of an independent business, performs or contracts for the performance of landscaping
7 work with the intent of offering for sale before, upon or after completion of the landscaping work
8 the property upon which the landscaping work is performed.

9 (7) Any landscaping work performed by a person on property that the person owns or in which
10 the person has a legal interest. The exception provided by this subsection does not apply to a
11 person who, in pursuit of an independent business, performs or contracts for the performance of
12 landscaping work with the intent of offering for sale before, upon or after completion of the land-
13 scaping work the property on which the landscaping work is performed.

14 (8) A general contractor licensed under ORS chapter 701 who performs landscaping work if the
15 total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work
16 is performed on residential property for which the contractor is under contract for the construction
17 of a new dwelling. The exception provided by this subsection does not apply to the performance of
18 irrigation work by a general contractor. The State Landscape Contractors Board shall revise the
19 amount specified in this subsection every five years, beginning in 2003, based on changes in the
20 Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published
21 by the Bureau of Labor Statistics of the United States Department of Labor.

22 (9) A general contractor licensed under ORS chapter 701 who performs landscaping work on
23 residential property that is directly related to local building code requirements or occupancy ordi-
24 nances including, but not limited to, the placement of street trees. The exception provided by this
25 subsection does not apply to the performance of irrigation work by a general contractor.

26 **(10) A general contractor licensed under ORS chapter 701 who subcontracts to a land-**
27 **scaping business the performance of landscape work on construction projects of the general**
28 **contractor. This subsection does not allow a general contractor to advertise or represent**
29 **that the general contractor is licensed to provide landscaping services.**

30 [(10)] (11) A person engaged in making plans or drawings for the selection, placement or use of
31 plants or other site features, unless the plans or drawings are for the purpose of providing con-
32 struction details and specifications.

33 [(11)] (12) Use by a person other than a landscape contractor of the title "landscape designer"
34 when engaged in making plans or drawings described in subsection [(10)] (11) of this section.

35 [(12)] (13) A person providing recommendations or written specifications for soil amendments
36 or planting media if the recommendations or specifications are solely for the purpose of plant in-
37 stallation.

38 [(13)] (14) A person registered under ORS 447.010 to 447.156 when performing repair and main-
39 tenance on piping for irrigation systems.

40 [(14)] (15) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS
41 chapter 701 when performing work that the contractor may perform under [subsection (8) or (9)]
42 **subsections (8) to (10)** of this section.

43 [(15)] (16) An employee of a licensed landscaping business when performing work for the busi-
44 ness under the direct supervision of a licensed landscape contractor.

45 [(16)] (17) An employee of a worker leasing company or temporary service provider, both as

1 defined in ORS 656.850, when performing work for a licensed landscaping business under the direct
 2 supervision of a licensed landscape contractor.

3 **SECTION 4.** ORS 701.010 is amended to read:

4 701.010. The Construction Contractors Board may adopt rules to make licensure optional for
 5 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
 6 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

7 (1) A person who is constructing, altering, improving or repairing personal property.

8 (2) A person who is constructing, altering, improving or repairing a structure located within the
 9 boundaries of any site or reservation under the jurisdiction of the federal government.

10 (3) A person who furnishes materials, supplies, equipment or finished product and does not fab-
 11 ricate them into, or consume them, in the performance of the work of a contractor.

12 (4) A person working on one structure or project, under one or more contracts, when the ag-
 13 gregate price of all of that person's contracts for labor, materials and all other items is less than
 14 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
 15 to a person who advertises or puts out any sign or card or other device that might indicate to the
 16 public that the person is a contractor.

17 (5) An owner who contracts for work to be performed by a licensed contractor. This subsection
 18 does not apply to a person who, in the pursuit of an independent business, constructs, remodels,
 19 repairs or for compensation and with the intent to sell the structure, arranges to have constructed,
 20 remodeled or repaired a structure with the intent of offering the structure for sale before, upon or
 21 after completion. It is prima facie evidence that there was an intent of offering the structure for sale
 22 if the person who constructed, remodeled or repaired the structure or arranged to have the struc-
 23 ture constructed, remodeled or repaired does not occupy the structure after its completion.

24 (6) A person performing work on a property that person owns or performing work as the owner's
 25 employee, whether the property is occupied by the owner or not, or a person performing work on
 26 that person's residence, whether or not that person owns the residence. This subsection does not
 27 apply to a person performing work on a structure owned by that person or the owner's employee if
 28 the work is performed, in the pursuit of an independent business, with the intent of offering the
 29 structure for sale before, upon or after completion.

30 (7) A person licensed in one of the following trades or professions when operating within the
 31 scope of that license:

32 (a) An architect licensed by the State Board of Architect Examiners.

33 (b) A registered professional engineer licensed by the State Board of Examiners for Engineering
 34 and Land Surveying.

35 (c) A water well contractor licensed by the Water Resources Department.

36 (d) A sewage disposal system installer licensed by the Department of Environmental Quality.

37 (e) A landscaping business licensed under ORS 671.510 to 671.710 that:

38 **(A) Constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining**
 39 **walls and that meets the applicable bonding requirements under ORS 671.690; or**

40 **(B) Contracts for a landscaping project that includes the performance of both landscaping**
 41 **work and the construction of site features. This subparagraph does not allow a landscaping**
 42 **business to advertise or represent that the business is licensed to provide construction con-**
 43 **tractor services. As used in this subparagraph, "site features" means surfaces, steps,**
 44 **trellises, benches, water features, spas, ponds, waterways, pools, gazebos, small sheds for**
 45 **storing gardening tools and other physical elements in the landscape that are not within the**

1 **scope of a landscaping business license. The exception provided by this subparagraph applies**
 2 **only if the landscaping business:**

3 (i) **Subcontracts the construction of the landscape project site features to one or more**
 4 **construction contractors licensed under this chapter;**

5 (ii) **Notwithstanding ORS 671.690, files with the State Landscape Contractors Board a**
 6 **bond, letter of credit or deposit for an amount not less than \$15,000; and**

7 (iii) **Files with the State Landscape Contractors Board a certificate of public liability,**
 8 **personal injury and property damage insurance covering the work of the landscaping busi-**
 9 **ness for an amount not less than \$1 million.**

10 (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood
 11 destroying organisms for the transfer of real estate.

12 (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered
 13 under ORS chapter 674 by the Appraiser Certification and Licensure Board.

14 (8) A person who performs work subject to this chapter as an employee of a contractor.

15 (9) A manufacturer of a manufactured home constructed under standards established by the
 16 federal government.

17 (10) A person involved in the movement of:

18 (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet
 19 in width.

20 (b) Structures not in excess of 16 feet in width when the structures are being moved by their
 21 owner if the owner is not a contractor required to be licensed under this chapter.

22 (11) A commercial lending institution or surety company that arranges for the completion, repair
 23 or remodeling of a structure. As used in this subsection, "commercial lending institution" means
 24 any bank, mortgage banking company, trust company, savings bank, savings and loan association,
 25 credit union, national banking association, federal savings and loan association, insurance company
 26 or federal credit union maintaining an office in this state.

27 (12) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when
 28 performing work on a structure that the real estate licensee manages under a contract.

29 (13) Units of government other than those specified in ORS 701.005 (10)(b) and (c).

30 (14) A qualified intermediary in a property exchange that qualifies under section 1031 of the
 31 Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary
 32 is not performing construction activities.

33 (15) A business that supplies personnel to a licensed contractor for the performance of work
 34 under the direction and supervision of the contractor.

35 **SECTION 5.** ORS 701.055 is amended to read:

36 701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a
 37 contractor unless that person has a current, valid license issued by the Construction Contractors
 38 Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit
 39 a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed
 40 under this chapter. A partnership or joint venture is licensed for the purpose of offering to under-
 41 take work as a contractor on a structure if any of the partners or joint venturers whose name ap-
 42 pears in the business name of the partnership or joint venture is licensed under this chapter.

43 (2) A licensed partnership or corporation shall notify the board immediately upon any change
 44 in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the
 45 partnership may not conduct activities that require a license under this chapter.

1 (3) A city, county or the State of Oregon may not issue a building permit to any person required
2 to be licensed under this chapter that does not have a current, valid license. A county, city or state
3 agency that requires the issuance of a permit as a condition precedent to construction, alteration,
4 improvement, demolition, movement or repair of any building or structure or the appurtenances to
5 the structure shall, as a condition for issuing the permit, require that the applicant for a permit file
6 a written statement, subscribed by the applicant. The statement must affirm that the applicant is
7 licensed under this chapter, give the license number and state that the license is in full force and
8 effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the ex-
9 emption. The city, county or state agency shall list the contractor’s license number on the permit
10 obtained by that contractor.

11 (4) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the
12 city, county or state shall supply the applicant with an Information Notice to Property Owners
13 About Construction Responsibilities. The city, county or state may not issue a building permit for
14 a residential structure to the applicant until the applicant signs a statement in substantially the
15 following form:

16 _____

17

18 (a) I have read and understand the Information Notice to Property Owners About Construction
19 Responsibilities; and

20 (b) I own, reside in or will reside in the completed dwelling. My general contractor is
21 _____, Construction Contractors Board license no. _____, license expiration date
22 _____. I will instruct my general contractor that all subcontractors who work on this
23 dwelling must be licensed with the Construction Contractors Board; or

24 (c) I am performing work on property I own, a residence that I reside in or a residence that I
25 will reside in.

26 (d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcon-
27 tractors licensed with the Construction Contractors Board.

28 (e) If I change my mind and do hire a general contractor, I will contract with a general con-
29 tractor who is licensed with the Construction Contractors Board and I will immediately notify the
30 office issuing this building permit of the name of the general contractor _____.

31 _____

32

33 (5) The board shall adopt by rule a form entitled “Information Notice to Property Owners About
34 Construction Responsibilities” that shall describe, in nontechnical language and in a clear and co-
35 herent manner using words in their common and everyday meaning, the responsibilities property
36 owners are undertaking by acting as their own general contractor and the problems that could de-
37 velop. The responsibilities described in the form shall include, but not be limited to:

38 (a) Compliance with state and federal laws regarding Social Security tax, income tax and un-
39 employment tax.

40 (b) Workers’ compensation insurance on workers.

41 (c) Liability and property damage insurance.

42 (6) The board shall develop and furnish to city, county and state building permit offices, at no
43 cost to the offices, the Information Notice to Property Owners About Construction Responsibilities
44 and the statement to be signed by the permit applicant.

45 (7) A city or county that requires a business license for engaging in a business subject to reg-

1 ulation under this chapter shall require that the licensee or applicant for issuance or renewal of the
 2 business license file, or have on file, with the city or county, a signed statement that the licensee
 3 or applicant is licensed under this chapter.

4 (8) It is prima facie evidence of doing business as a contractor if a person for that person's own
 5 use performs, employs others to perform, or for compensation and with the intent to sell the struc-
 6 ture, arranges to have performed any work described in ORS 701.005 (3) if within any 36-month pe-
 7 riod that person offers for sale two or more newly built structures on which that work was
 8 performed.

9 (9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate,
 10 independent business.

11 (10) The provisions of this chapter are exclusive and a city, county or other political subdivision
 12 may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the
 13 regulatory or surety registration of any contractor licensed with the board. This subsection does
 14 not limit or abridge the authority of any city or county to:

15 (a) License and levy and collect a general and nondiscriminatory license fee levied upon all
 16 businesses or upon business conducted by any firm within the city or county;

17 (b) Require a contractor to pay a fee, post a bond or require insurance when the city, county
 18 or political subdivision is contracting for the service of the contractor; or

19 (c) Regulate a contractor that is not required to be licensed under this chapter.

20 (11)(a) A contractor shall maintain a list that includes the following information about all sub-
 21 contractors or other contractors performing work on a project for that contractor:

22 (A) Names and addresses.

23 (B) License numbers.

24 (b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the
 25 board within 72 hours after a board request made during reasonable working hours.

26 *[(12) A contractor may not hire any subcontractor or other contractor to perform work unless the*
 27 *subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS*
 28 *701.010.]*

29 **(12) A contractor may not enter into a contract for any subcontractor, other contractor**
 30 **or landscaping business to perform construction work unless the work is within the scope**
 31 **of a license issued to the subcontractor, contractor or landscaping business under ORS**
 32 **671.510 to 671.710 or this chapter or the subcontractor, contractor or business is exempt from**
 33 **licensure under ORS 671.540 or 701.010.**

34 (13) A consumer notification form designed to specifically inform a property owner what the
 35 property owner should do to protect themselves in a residential repair, remodel or construction
 36 project shall be prepared by the board and provided at no cost to all licensed contractors. The
 37 contractor shall deliver the form to the property owner when the contractor submits a bid or pro-
 38 posal for work on a residential structure. The form shall include an explanation of the meaning of
 39 licensure, including a statement that licensure is not an endorsement of a contractor's work, and
 40 an explanation of the bond and insurance levels required of contractors for the benefit of property
 41 owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11
 42 inches. The contractor may reproduce the form on the contractor's bid proposal.

43 (14) A contractor may not perform work subject to this section for an owner of a residential
 44 structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of
 45 a contract was initially less than \$2,000, but during the course of performance the contract exceeds

1 that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later
2 than five days after the contractor knows or should reasonably know that the contract price will
3 exceed \$2,000. Failure to have a written contract will not void the contract.

4 (15) Except as provided in ORS 671.540, a contractor that is not licensed under ORS 671.560
5 shall hire a person licensed under ORS 671.560 to perform landscaping work.

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