

Enrolled House Bill 2117

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)

CHAPTER

AN ACT

Relating to landscaping; creating new provisions; and amending ORS 215.213, 215.283, 447.060, 448.279, 479.940, 571.045, 571.057, 571.250, 656.027, 671.321, 671.520, 671.525, 671.530, 671.540, 671.555, 671.560, 671.565, 671.568, 671.570, 671.574, 671.575, 671.580, 671.590, 671.600, 671.603, 671.605, 671.607, 671.610, 671.613, 671.614, 671.615, 671.625, 671.650, 671.660, 671.690, 671.700, 671.703, 671.707, 671.710, 671.997, 701.005, 701.010, 701.013 and 701.015 and section 2, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62), section 2, chapter 151, Oregon Laws 2007 (Enrolled Senate Bill 63), and section 2, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076).

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

SECTION 1. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

- (a) Public or private schools, including all buildings essential to the operation of a school.
- (b) Churches and cemeteries in conjunction with churches.
- (c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) Primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-

tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(j) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (t) of this subsection.

(L) The breeding, kenneling and training of greyhounds for racing in any county with a population of more than 200,000 in which there is located a greyhound racing track or in a county with a population of more than 200,000 that is contiguous to such a county.

(m) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(n) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(o) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(p) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(r) Creation of, restoration of or enhancement of wetlands.

(s) A winery, as described in ORS 215.452.

(t) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the

deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(u) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(v) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(w) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(x) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(y) Fire service facilities providing rural fire protection services.

(z) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(aa) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(bb) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(x) of this section.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(h) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k) Dog kennels not described in subsection (1)(L) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A [*landscaping*] **landscape contracting** business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

SECTION 2. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches and cemeteries in conjunction with churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in ORS 215.275.

(e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(f) Primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (1)(a) or (b).

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) The breeding, kenneling and training of greyhounds for racing.

(k) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(L) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(m) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(n) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(o) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(p) Creation of, restoration of or enhancement of wetlands.

(q) A winery, as described in ORS 215.452.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) Alteration, restoration or replacement of a lawfully established dwelling that:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights;

(D) Has a heating system; and

(E) In the case of replacement:

(i) Is removed, demolished or converted to an allowable nonresidential use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this paragraph regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions and release statements filed under this paragraph; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement

permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm crops located on a farm operation that provides at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm uses. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation canals, delivery lines and those structures and accessory operational facilities associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

(z) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use but not including the processing of farm crops as described in subsection (1)(u) of this section.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(s) of this section.

(m) Transmission towers over 200 feet in height.

- (n) Dog kennels not described in subsection (1)(j) of this section.
- (o) Residential homes as defined in ORS 197.660, in existing dwellings.
- (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.
- (q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.
- (r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.
- (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.
- (t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.
- (u) Room and board arrangements for a maximum of five unrelated persons in existing residences.
- (v) Operations for the extraction and bottling of water.
- (w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.
- (x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:
 - (A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and
 - (B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.
- (y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.
- (z) A [*landscaping*] **landscape contracting** business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

- (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or
- (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

SECTION 3. ORS 447.060 is amended to read:

447.060. (1) ORS 447.010 to 447.156 do not apply to a person:

- (a) Engaging in plumbing work when not so engaged for hire.

(b) Using the services of regular employees in performing plumbing work for the benefit of property owned, leased or operated by the person. For purposes of this paragraph, "regular employee" means a person who is subject to the provisions of ORS 316.162 to 316.221 and who has completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

(c) Using the services of an employee or contractor of a utility company, energy service provider or water supplier to install an approved low-flow showerhead or faucet aerator in existing plumbing fixtures. The devices installed under this paragraph are exempt from the certification, permit and inspection requirements of ORS 447.010 to 447.156 and ORS chapter 693.

(2) A [*landscaping*] **landscape contracting** business licensed under ORS 671.560 is not required to be licensed under ORS 447.010 to 447.156 to install, repair or maintain backflow assemblies for irrigation systems and ornamental water features if the work is performed by an individual who is licensed as required by ORS 671.615 and is an owner or employee of the [*landscaping*] **landscape contracting** business. The repair and maintenance of the backflow assembly must be performed by a tester certified under ORS 448.279. The [*registration*] **licensing** exemption established under this subsection does not exempt the [*landscaping*] **landscape contracting** business from the inspection and permit requirements of ORS 447.010 to 447.156.

(3) This section applies to any person, including but not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, this state, the federal government and state or federal agencies.

SECTION 4. ORS 448.279 is amended to read:

448.279. (1) The Department of Human Services by rule shall establish a certification program for persons who inspect cross connections or test backflow assemblies. The program shall include minimum qualifications necessary for a person to be certified to:

- (a) Conduct a cross connection inspection; and
- (b) Test a backflow assembly.

(2) Except for an employee of a water supplier as defined in ORS 448.115, a person certified under this section must:

(a) Become licensed as a construction contractor with the Construction Contractors Board as provided under ORS chapter 701; or

(b) [*Become licensed as a landscape contractor as provided*] **Be employed by a landscape contracting business licensed** under ORS 671.510 to 671.710.

(3) In conjunction with the certification program established under subsection (1) of this section, the department may establish and collect a fee from an individual requesting certification under the program. A fee imposed under this subsection may:

(a) Not be refundable; and

(b) Not exceed the cost of administering the certification program of the department for which purpose the fee is established, as authorized by the Legislative Assembly within the budget of the department and as the budget may be modified by the Emergency Board.

(4) The department may not require a journeyman plumber who holds a certificate of competency issued under ORS chapter 693 or an apprentice plumber, as defined in ORS 693.010, to obtain a certification for testing backflow prevention device assemblies under the program established under this section.

(5) All moneys collected by the department under this section shall be deposited in the General Fund to the credit of an account of the department. Such moneys are continuously appropriated to the department to pay the cost of administering the certification program established pursuant to this section and the cost of administering water system cross connection and backflow assembly programs.

SECTION 5. ORS 479.940 is amended to read:

479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise Residential Dwelling Code:

- (a) Prewiring of cable television and telephone systems owned by the owner of the residence;

- (b) Garage door openers;
- (c) Vacuum systems;
- (d) Audio and stereo systems;
- (e) HVAC;
- (f) Landscape sprinkler controls;
- (g) Landscape lighting; and
- (h) Doorbells.

(2) The provisions of subsection (1) of this section apply only to persons or businesses licensed and in good standing with the Construction Contractors Board.

(3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical activity involving landscape irrigation control wiring and outdoor landscape lighting installed by a **landscape contracting** business licensed under ORS 671.510 to 671.710.

(b) A **landscape contracting** business exempt from licensing under this [section] **subsection** shall issue an identification card to its landscape irrigation control wiring or outdoor landscape lighting installer. The form for the identification card shall be provided by the State Landscape Contractors Board. The identification card shall include the name of the installer, the name and State Landscape Contractors Board identification number of the [landscaping] **landscape contracting** business and the date of issue of the identification card. The card shall be carried by the installer at the job site when performing the allowed electric installations.

(4) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical activity involving the installation, maintenance or repair of lottery equipment at retail locations by employees or vendors of the Oregon State Lottery Commission. The exemption provided by this subsection does not authorize work by unlicensed persons on systems of 115 volts or more.

(5) All nonlicensure requirements of ORS 479.510 to 479.945, including permits for and compliance with the electrical specialty code, apply to activities conducted under subsections (1) to (4) of this section. If any person or business repeatedly violates the permit or code compliance requirements, in addition to any other remedy, the Electrical and Elevator Board may suspend, condition or revoke a person's or business's right to use this provision.

SECTION 5a. If House Bill 3354 becomes law, section 5 of this 2007 Act (amending ORS 479.940) is repealed and ORS 479.940, as amended by section 1, chapter _____, Oregon Laws 2007 (Enrolled House Bill 3354), is amended to read:

479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise Residential Dwelling Code:

- (a) Prewiring of cable television and telephone systems owned by the owner of the residence;
- (b) Garage door openers;
- (c) Vacuum systems;
- (d) Audio and stereo systems;
- (e) HVAC;
- (f) Landscape sprinkler controls;
- (g) Landscape lighting; and
- (h) Doorbells.

(2) The provisions of subsection (1) of this section apply only to persons or businesses licensed and in good standing with the Construction Contractors Board.

(3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a **landscape contracting** business licensed under ORS 671.510 to 671.710 when making installations of landscape irrigation control wiring and outdoor landscape lighting involving a Class II or Class III system that does not exceed 30 volts and 750 volt-amperes.

(b) A **landscape contracting** business exempt from licensing under this [section] **subsection** shall issue an identification card to its landscape irrigation control wiring or outdoor landscape lighting installer. The form for the identification card shall be provided by the State Landscape Contractors Board. The identification card shall include the name of the installer, the name and

State Landscape Contractors Board identification number of the [*landscaping*] **landscape contracting** business and the date of issue of the identification card. The card shall be carried by the installer at the job site when performing the allowed electric installations.

(4) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical activity involving the installation, maintenance or repair of lottery equipment at retail locations by employees or vendors of the Oregon State Lottery Commission. The exemption provided by this subsection does not authorize work by unlicensed persons on systems of 115 volts or more.

(5) All nonlicensure requirements of ORS 479.510 to 479.945, including permits for and compliance with the electrical specialty code, apply to activities conducted under subsections (1) to (4) of this section. If any person or business repeatedly violates the permit or code compliance requirements, in addition to any other remedy, the Electrical and Elevator Board may suspend, condition or revoke a person's or business's right to use this provision.

SECTION 6. ORS 571.045 is amended to read:

571.045. ORS 571.055 (1) and 571.057 do not apply to:

(1) Any person whose business consists only of retail sales to the ultimate consumer and the total of such sales of nursery stock does not exceed \$250 during a fiscal year. Except as provided in subsection (2) of this section, the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991 apply at any time the sales of nursery stock exceed \$250 during a fiscal year.

(2) A person licensed as a [*landscaping*] **landscape contracting** business under ORS 671.560 and 671.565 who does not grow plants, does not store plants except as provided by the State Department of Agriculture by rule, and acquires all plants from a nursery licensed under this chapter.

SECTION 7. ORS 571.057 is amended to read:

571.057. (1) Each person required to be licensed by ORS 571.055 shall make application for such license or for renewal thereof, on a form furnished by the State Department of Agriculture which shall contain:

(a) The name and address of the applicant; the number of locations to be operated by the applicant and the addresses thereof; and the assumed business name of the applicant;

(b) If other than an individual, a statement whether such person is a partnership, corporation or other organization;

(c) The gross dollar volume of sales or purchases of nursery stock by the applicant within Oregon during the prior calendar year, or if the applicant maintains sales records on a fiscal basis, the prior fiscal year; and

(d) The type of business to be operated and, if applicant is an agent, the principals the applicant represents.

(2) Each application for license shall be accompanied by a license fee as provided for by this section and any amounts required by ORS 571.075 (3). Such application shall not be a public record but shall be subject to audit and review by the department. An applicant for an original license or for a renewal license, without a full calendar year of prior nursery stock sales or purchase experience upon which to base the fees, shall base such fees on an estimated annual gross dollar volume of sales or purchases of nursery stock by the applicant. Notwithstanding the provisions of ORS 571.075, upon application by such person for a renewal of license for a subsequent year, the fees for the previous license year shall be adjusted to reflect the actual annual gross dollar volume of sales or purchases of nursery stock by such applicant. Any additional fees found to be due shall be paid to the department at the time of application for renewal of license, or the department shall refund any overpayment found to be due the applicant.

(3)(a) For license years beginning on and after July 1, 1995, the license fees for growers and dealers shall be established by the department after consulting with the State Nursery Research and Regulatory Committee and after public hearing in accordance with ORS chapter 183. Such fees shall be established on the basis of annual gross dollar volume of sales or purchases of nursery stock within Oregon for the calendar year immediately preceding the license period.

(b) The license fees shall not be less than \$65 nor more than \$20,000. The millage rate shall be not less than one-tenth mill nor more than 5 mills. The fees shall be established in such amount as

shall be sufficient to allow the department to administer and enforce the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(c) For license years beginning July 1, 1994, and thereafter, in addition to and at the time of payment of the annual license fee, growers and dealers shall pay assessments for the expenses of carrying out the provisions of ORS 571.230 (2) and (3). Dealers shall pay 0.0002 times the gross dollar purchases in the previous license year. Growers shall pay 0.0002 times the gross dollar sales in the previous license year. In no event shall the assessment be less than \$10.

(4) For florists and landscape [*contractors*] **contracting businesses**, dealer and agent fees will be computed on the basis of gross purchases of plants. For greenhouse operators and growers, including persons collecting native plants, fees will be computed on the basis of gross sales of plants or sales value of plants produced in Oregon.

(5) Each grower or dealer shall be entitled to one sales location under the license of the grower or dealer. Each additional sales location, yard, branch store, stall or peddling vehicle maintained by such person shall require the payment of the full license fee for each of such additional sales outlets. A grower who is also a dealer shall be licensed only as a grower.

SECTION 8. ORS 571.250 is amended to read:

571.250. The State Landscape Contractors Board and the State Department of Agriculture shall enter into an interagency agreement to address how the board and the department shall ensure that licensed [*landscaping*] **landscape contracting** businesses comply with the provisions of this chapter.

SECTION 9. ORS 656.027 is amended to read:

656.027. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection "domestic servant" means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

(A) The employment is not in the course of the trade, business or profession of the employer;
or

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, "casual" refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than \$500.

(4) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States.

(5) A worker engaged in the transportation in interstate commerce of goods, persons or property for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business in this state.

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or

demolition of an improvement on real property or appurtenances thereto. When labor or services are performed under contract, the partnership must qualify as an independent contractor.

(9) Except as provided in subsection (25) of this section, members, including members who are managers, of limited liability companies, regardless of the nature of the work performed. However, members, including members who are managers, of limited liability companies with more than one member, while engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. When labor or services are performed under contract, the limited liability company must qualify as an independent contractor.

(10) Except as provided in subsection (24) of this section, corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officers, subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

(b) If the activities of the corporation involve the commercial harvest of timber and all officers of the corporation are members of the same family and are parents, daughters or sons, daughters-in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers. For all other corporations involving the commercial harvest of timber, the maximum number of exempt corporate officers for the corporation shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(c) When labor or services are performed under contract, the corporation must qualify as an independent contractor.

(11) A person performing services primarily for board and lodging received from any religious, charitable or relief organization.

(12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

(13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.

(14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

(15) A person who has an ownership or leasehold interest in equipment and who furnishes, maintains and operates the equipment. As used in this subsection "equipment" means:

(a) A motor vehicle used in the transportation of logs, poles or piling.

(b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

(c) A motor vehicle operated as a taxicab as defined in ORS 825.017.

(d) A motor vehicle used in the transportation of property by a for-hire motor carrier that is required under ORS 825.100 or 825.104 to possess a certificate or permit.

(16) A person engaged in the transportation of the public for recreational down-river boating activities on the waters of this state pursuant to a federal permit when the person furnishes the equipment necessary for the activity. As used in this subsection, "recreational down-river boating

activities” means those boating activities for the purpose of recreational fishing, swimming or sightseeing utilizing a float craft with oars or paddles as the primary source of power.

(17) A person who performs volunteer ski patrol activities who receives no wage other than noncash remuneration.

(18) A person 19 years of age or older who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public and perform or undertake any necessary or attendant functions related thereto.

(19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411, 418, 430 or 443.

(20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals, lodging or expenses.

(21) A person performing services under a property tax work-off program established under ORS 310.800.

(22) A person who performs service as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course.

(23)(a) Partners who are actively [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other partnerships [*registered*] **licensed** under ORS 671.510 to 671.710 or [*licensed under*] ORS chapter 701, the maximum number of exempt partners shall be whichever is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations [*registered*] **licensed** under ORS 671.510 to 671.710 or [*licensed under*] ORS chapter 701, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject workers. For all other companies [*registered*] **licensed** under ORS 671.510 to 671.710 or [*licensed under*] ORS chapter 701, the maximum number of exempt company members shall be whichever is the greater of the following:

- (A) Two company members; or
- (B) One company member for each 10 company employees.
- (b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company *[registered]* **licensed** under ORS 671.525 or *[licensed under ORS]* 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.
- (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis.
- (27) A person performing language translator or interpreter services that are provided for others through an agent or broker.

SECTION 10. ORS 671.321 is amended to read:

671.321. (1) ORS 671.310 to 671.459, 671.992 and 671.995 do not restrict or otherwise affect the right of any person to:

- (a) Practice architecture under ORS 671.010 to 671.220;
- (b) Practice engineering under ORS 672.002 to 672.325;
- (c) Engage in the occupation of growing and marketing nursery stock, or use the title “nurseryman” or “landscape nurseryman”;
- (d) Operate as a landscape *[contractor]* **construction professional** or *[landscaping]* **landscape contracting** business under ORS 671.510 to 671.710 or use the title “**landscape construction professional**” or “landscape contractor”;
- (e) Perform work described under ORS 671.540;
- (f) Engage in making plans or drawings for the selection, placement or use of plants or other site features unless the plans or drawings are for the purpose of providing construction details and specifications not otherwise exempted;
- (g) Use the title “landscape designer” in connection with activities described under paragraph (f) of this subsection;
- (h) Make any plans, drawings or specifications for property owned by that person; or
- (i) Provide recommendations or written specifications for soil amendments or planting mediums if the recommendations or specifications are solely for purposes of plant installation and do not significantly alter the stability of the soil profile or surface drainage patterns.

(2) The scope of services described in ORS 671.310 (5) and (6) does not preclude a registered landscape architect from:

- (a) Planning the development of land areas and elements used on land areas; or
- (b) Performing services described in ORS 671.310 (5) and (6) in connection with the settings, approaches or environment for buildings, structures or facilities in accordance with legally established standards for public health, safety and welfare.

(3) ORS 671.310 to 671.459, 671.992 and 671.995 do not apply to:

- (a) The preparation of detailed or shop drawings that a construction contractor is required to furnish or the administration of construction contracts by a person customarily engaged in contracting work.
- (b) The preparation of technical submissions or the administration of construction contracts by employees of a landscape architect or a landscape architecture business when acting under the direct supervision of a registered landscape architect.
- (c) Employees of the federal government acting within the scope of that employment.

SECTION 11. ORS 671.520 is amended to read:

671.520. As used in ORS 671.510 to 671.710, unless the context requires otherwise:

- (1) “Landscape *[contractor]* **construction professional**” means *[any person]* **an individual** who for compensation or with the intent to be compensated performs or supervises activities requiring the art, ability, experience, knowledge, science and skill to:
 - (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
 - (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
 - (c) Construct or repair ornamental water features, drainage systems or irrigation systems; or

(d) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

(2) **“Landscape contracting business” means a business that for compensation or with the intent to be compensated arranges for or submits a bid or otherwise offers or contracts to provide the services of a landscape construction professional.**

[2] *“Landscaping business” means a business that for compensation or with the intent to be compensated arranges for or submits a bid or otherwise offers or contracts to provide the services of a landscape contractor.*

(3) “Licensee” means a person that is licensed under ORS 671.510 to 671.710 as a landscape [contractor] **construction professional** or [landscaping] **landscape contracting** business.

(4) “Nursery stock” means nursery stock:

(a) As defined by ORS 571.005 other than stock grown for commercial resale or reforestation; or

(b) As defined by the State Landscape Contractors Board by rule.

(5) “Ornamental water features” means fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions as identified by the board by rule.

SECTION 12. ORS 671.525 is amended to read:

671.525. (1) An applicant for a [landscaping] **landscape contracting** business license must qualify as an independent contractor, under ORS 670.600, to be licensed with the State Landscape Contractors Board.

(2) The board shall establish two classes of independent contractor [registration] **licensees**:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations and limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members if any of the partners, officers or members are not part of the same family and related as parents, spouses, siblings, children, grandchildren, sons-in-law or daughters-in-law.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt.

(3) All partnerships, corporations and limited liability companies **applying for a landscape contracting business license** must have a federal tax identification number.

[3] (4) If a licensee who qualifies [for registration] under subsection (2)(b) of this section hires one or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section, the licensee is subject to penalties under ORS 671.997 and must [reapply to the board for registration in the correct class] **submit proof that the licensee qualifies under subsection (2)(a) of this subsection.**

[4] (5) The decision of the board that a licensee is an independent contractor applies only when the licensee is performing work of the nature described in ORS 671.520 and 671.530.

SECTION 13. ORS 671.530 is amended to read:

671.530. (1) A person may not operate as a landscape [contractor] **construction professional** in this state without a valid landscape [contractor’s] **construction professional** license issued pursuant to ORS 671.560.

(2) A person may not represent in any manner that the person is a landscape [contractor] **construction professional** unless the person has a valid landscape [contractor’s] **construction professional** license issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is not limited to:

(a) Using the title of landscape contractor, **landscape construction professional**, landscape gardener or landscaper or any other title using a form of the word “landscape” **that indicates or tends to indicate that the person is a landscape construction professional**; and

(b) Using any [title,] sign, card or device that indicates or tends to indicate that the person is a landscape [contractor] **construction professional.**

(3) A person may not operate as a [*landscaping*] **landscape contracting** business in this state unless the person has a valid [*landscaping*] **landscape contracting** business license issued pursuant to ORS 671.560.

(4) A person may not advertise or represent in any manner that the person is a [*landscape*] **landscape contracting** business unless the person has a valid [*landscaping*] **landscape contracting** business license issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is not limited to:

(a) Using the title of landscape business, [*or*] landscaping business **or landscape contracting business**; and

(b) Using any title, sign, card or device that indicates or tends to indicate that the person is a [*landscaping*] **landscape contracting** business.

(5) A landscape maintenance business may use a form of the word “landscape” in the title of the business only if the title clearly indicates the maintenance nature of the business. For purposes of this subsection, the term “landscape gardening” does not indicate the maintenance nature of a landscape maintenance business.

(6) A landscape [*contractor is authorized to*] **construction professional** may perform landscaping work only while in the employ of a [*landscaping*] **landscape contracting** business licensed and bonded as required by ORS 671.510 to 671.710. If the landscape [*contractor*] **construction professional** is the sole proprietor, the [*contractor*] **landscape construction professional** must also obtain a license as a [*landscaping*] **landscape contracting** business.

SECTION 14. ORS 671.540 is amended to read:

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

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

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

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

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

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

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

(4) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by a person or business licensed with the Construction Contractors Board.

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

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

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

(8) A general contractor licensed under ORS chapter 701 who performs landscaping work if the total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work is performed on residential property for which the contractor is under contract for the construction of a new dwelling. The exception provided by this subsection does not apply to the performance of irrigation work by a general contractor. The State Landscape Contractors Board shall revise the

amount specified in this subsection every five years, beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

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

(10) A person engaged in making plans or drawings for the selection, placement or use of plants or other site features, unless the plans or drawings are for the purpose of providing construction details and specifications.

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

(12) A person providing recommendations or written specifications for soil amendments or planting media if the recommendations or specifications are solely for the purpose of plant installation.

(13) A person registered under ORS 447.010 to 447.156 when performing repair and maintenance on piping for irrigation systems.

(14) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS chapter 701 when performing work that the contractor may perform under subsection (8) or (9) of this section.

(15) An employee of a licensed [*landscaping*] **landscape contracting** business when performing work for the business under the direct supervision of a licensed landscape [*contractor*] **construction professional**.

(16) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed [*landscaping*] **landscape contracting** business under the direct supervision of a licensed landscape [*contractor*] **construction professional**.

SECTION 15. ORS 671.555 is amended to read:

671.555. (1) The State Landscape Contractors Board may investigate the activities of any person engaged in the [*landscaping*] **landscape contracting** business to determine compliance with ORS 671.510 to 671.710.

(2) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the board for the costs of such investigations.

(3) Any inspector **or investigator** authorized by the board to determine compliance with [*the provisions of*] ORS 671.510 to 671.710 [*is authorized to*] **may** require any person who is engaged in any activity regulated by ORS 671.510 to 671.710 to demonstrate proof of compliance with the [*registration*] **licensing** requirements of ORS 671.510 to 671.710. If a person who is contracting directly with the owner of the property does not demonstrate proof of compliance with the [*license*] **licensing** requirements of ORS 671.510 to 671.710, the inspector [*shall*] **or investigator may** give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the [*registration*] **licensing** requirements of ORS 671.510 to 671.710 and shall provide that unless the person demonstrates proof of compliance within two days of the date of the notice, the inspector **or investigator may** by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each property upon which the person is then performing work under contract. If more than one person is the owner of any such property, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the two-day period specified in the notice to demonstrate proof of compliance with the [*registration*] **licensing** requirements of ORS 671.510 to 671.710, the inspector [*is authorized to*] **or investigator may** order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demon-

strated. However, the inspector **or investigator** may not order the work stopped until at least two days after the copies of the notice of noncompliance have been served upon or delivered to the owners.

(4) Notwithstanding subsection (3) of this section, the board may order **landscaping** work stopped immediately if the [*landscape contractor*] **landscape contracting business** working on a worksite [*has never registered with the board or if the contractor*] cannot demonstrate that the [*contractor*] **business** has been [*registered*] **licensed** at any time within the two years immediately preceding work on the worksite.

(5) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to 671.710.

(6) If any person fails to comply with a subpoena issued under subsection (5) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

SECTION 15a. If House Bill 2075 becomes law, section 15 of this 2007 Act (amending ORS 671.555) is repealed and ORS 671.555, as amended by section 2, chapter _____, Oregon Laws 2007 (Enrolled House Bill 2075), is amended to read:

671.555. (1) The State Landscape Contractors Board may investigate the activities of any person engaged in the [*landscaping*] **landscape contracting** business to determine compliance with ORS 671.510 to 671.710.

(2) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the board for the costs of such investigations.

(3) Any inspector **or investigator** authorized by the board to determine compliance with ORS 671.510 to 671.710 may require any person who is engaged in any activity regulated by ORS 671.510 to 671.710 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.710. If a person who is contracting directly with the owner of the property does not demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.710, the inspector [*shall*] **or investigator may** give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of ORS 671.510 to 671.710 and shall provide that unless the person demonstrates proof of compliance within two days of the date of the notice, the inspector **or investigator** may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each property upon which the person is then performing work under contract. If more than one person is the owner of any such property, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the two-day period specified in the notice to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.710, the inspector [*is authorized to*] **or investigator may** order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector **or investigator** may not order the work stopped until at least two days after the copies of the notice of noncompliance have been served upon or delivered to the owners.

(4) Notwithstanding subsection (3) of this section, the board may order **landscaping** work stopped immediately if the [*landscaping*] **landscape contracting** business working on a worksite cannot demonstrate that the business has been licensed by the board at any time within the two years immediately preceding work on the worksite.

(5) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to 671.710.

(6) If any person fails to comply with a subpoena issued under subsection (5) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

SECTION 16. ORS 671.560 is amended to read:

671.560. (1) Except as provided in ORS 671.590, the State Landscape Contractors Board shall issue a landscape [*contractor's*] **construction professional** license to an applicant who satisfies the requirements of ORS 671.570.

(2) The board shall issue a [*landscaping*] **landscape contracting** business license to an applicant who satisfies the requirements of the board.

(3) An applicant for a license under this section shall apply to the board upon a form furnished by the board and give such information as the board considers necessary.

(4) The board may issue a limited or specialty license if the applicant is required to have a landscape [*contractor's*] **construction professional** license or **landscape contracting** business license but is not qualified or required to be licensed for all phases of landscape [*contracting*] **work**.

(5) A [*landscaping*] **landscape contracting** business that qualifies for the exemption described in ORS 571.045 shall indicate on its license application or license renewal application under this section the reasons the business qualifies for the exemption.

SECTION 16a. If House Bill 2076 becomes law, section 16 of this 2007 Act (amending ORS 671.560) is repealed and ORS 671.560, as amended by section 3, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076), is amended to read:

671.560. (1) Except as provided in ORS 671.590 and section 2, chapter 111, Oregon Laws 2007 [*of this 2007 Act*], the State Landscape Contractors Board shall issue a landscape [*contractor's*] **construction professional** license to an applicant who satisfies the requirements of ORS 671.570.

(2) The board shall issue a [*landscaping*] **landscape contracting** business license to an applicant who satisfies the requirements of the board.

(3) An applicant for a license under this section shall apply to the board upon a form furnished by the board and give such information as the board considers necessary.

(4)(a) The board may issue a limited or specialty license if the applicant is required to have a landscape [*contractor's*] **construction professional** license or **landscape contracting** business license but is not qualified or required to be licensed for all phases of landscape [*contracting*] **work**.

(b) The board may adopt rules to limit or restrict the landscape work performed by probationary landscape [*contractors*] **construction professionals**.

(5) A [*landscaping*] **landscape contracting** business that qualifies for the exemption described in ORS 571.045 shall indicate on its license application or license renewal application under this section the reasons the business qualifies for the exemption.

SECTION 17. ORS 671.565 is amended to read:

671.565. (1) Each person applying for a [*landscaping*] **landscape contracting** business license shall:

(a) Pay to the State Landscape Contractors Board the applicable [*landscaping*] **landscape contracting** business license fee established by the board under ORS 671.650.

(b) Employ at least one person with a landscape [*contractor*] **construction professional** license to supervise the landscaping operation of the business.

(c) Submit the names of all employees who are licensed [*contractors*] **landscape construction professionals**.

(d) File with the board a form of security acceptable under ORS 671.690.

(e) File with the board a certificate of public liability, personal injury and property damage insurance covering the work of the [*landscaping*] **landscape contracting** business that is subject to ORS 671.510 to 671.710 for an amount not less than \$100,000.

(f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an independent contractor.

(2) At the time of application for a license, for renewal of a license in active status or for return of a license to active status, the [*landscaping*] **landscape contracting** business shall provide evi-

dence satisfactory to the board that the public liability, personal injury and property damage insurance required by subsection (1)(e) of this section is in effect. During a license period, the [landscaping] **landscape contracting** business shall provide, to the extent required by the board, satisfactory evidence of continued public liability, personal injury and property damage insurance coverage.

SECTION 17a. If House Bill 2075 becomes law, section 17 of this 2007 Act (amending ORS 671.565) is repealed and ORS 671.565, as amended by section 3, chapter _____, Oregon Laws 2007 (Enrolled House Bill 2075), is amended to read:

671.565. (1) Each person applying for a [landscaping] **landscape contracting** business license must:

(a) Pay to the State Landscape Contractors Board the applicable [landscaping] **landscape contracting** business license fee established by the board under ORS 671.650.

(b) Have a landscape [contractor] **construction professional** license or employ at least one person with a landscape [contractor] **construction professional** license to supervise the landscaping operation of the business.

(c) Submit the names of all employees who are licensed [contractors] **landscape construction professionals**.

(d) File with the board a form of security acceptable under ORS 671.690.

(e) File with the board a certificate of public liability, personal injury and property damage insurance covering the work of the [landscaping] **landscape contracting** business that is subject to ORS 671.510 to 671.710 for an amount not less than \$100,000.

(f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an independent contractor.

(2) At the time of application for a license, for renewal of a license in active status or for return of a license to active status, the [landscaping] **landscape contracting** business shall provide evidence satisfactory to the board that the public liability, personal injury and property damage insurance required by subsection (1)(e) of this section is in effect. During a license period, the [landscaping] **landscape contracting** business shall provide, to the extent required by the board, satisfactory evidence of continued public liability, personal injury and property damage insurance coverage.

SECTION 18. ORS 671.568 is amended to read:

671.568. (1) If a licensed [landscaping] **landscape contracting** business is not operating as a [landscaping] **landscape contracting** business, the State Landscape Contractors Board may, upon request, place the license of the [landscaping] **landscape contracting** business in inactive status.

(2) A [landscaping] **landscape contracting** business in inactive status remains subject to board jurisdiction and is required to comply with the requirements for a [landscaping] **landscape contracting** business other than the security requirement under ORS 671.690 and the insurance requirements under ORS 671.565.

(3) A [landscaping] **landscape contracting** business that is in inactive status may not:

(a) Perform work as a [landscaping] **landscape contracting** business;

(b) Offer or provide for the performance of landscaping work as a [landscaping] **landscape contracting** business; or

(c) Obtain a building permit for work involving landscaping work by the **landscape contracting** business.

(4) A [landscaping] **landscape contracting** business license may not be placed or maintained in inactive status more than once during a licensing period.

SECTION 19. ORS 671.570 is amended to read:

671.570. Each person applying for a landscape [contractor's] **construction professional** license [shall] **must**:

(1) Pay to the State Landscape Contractors Board the **license** fee required by ORS 671.650. [and:]

(2) **Pay a nonrefundable application fee and an examination fee.**

[(1)] (3) Pass an examination, which [*shall be offered*] **the board shall offer** at least once each six months, [*by the board*] to determine the fitness of the applicant for licensing and [*have*]:

(a) **Have**, within 10 years before the day the application for a license is made, at least:

(A) Twenty-four months of employment with a [*landscape contractor*] **landscape contracting business**; or

(B) Twelve months of employment with a [*landscape contractor*] **landscape contracting business** and one full year of training in an area related to landscaping at an accredited school or college; or

(b) [*Proven*] **Prove** to the satisfaction of the board by test and experience that the applicant is qualified.

[(2)] (4) Be employed by a [*landscaping*] **landscape contracting** business if performing landscaping work.

[(3) *Pay a nonrefundable examination fee.*]

SECTION 19a. If House Bill 2076 becomes law and House Bill 2075 does not become law, section 19 of this 2007 Act (amending ORS 671.570) is repealed and ORS 671.570, as amended by section 4, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076), is amended to read:

671.570. (1) Each person applying for a landscape [*contractor's*] **construction professional** license must:

(a) Pay a nonrefundable application fee.

(b) Pay an examination fee.

(c) Pay to the State Landscape Contractors Board the landscape [*contractor's*] **construction professional** license fee required by ORS 671.650.

(d) Pass an examination, which the board shall offer at least once each six months, to determine the fitness of the applicant for licensing and within 10 years before the day the application for a license is made:

(A) Have at least 24 months of employment with a landscape contracting business; or

(B) Have at least 12 months of employment with a landscape contracting business and one full year of training in an area related to landscaping at an accredited school or college.

(e) Be employed by, or own, a [*landscaping*] **landscape contracting** business if performing landscaping work.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules allowing a person who does not meet the education and experience requirements in subsection (1)(d) of this section to substitute other education and experience that demonstrate the fitness of the person for licensing as a landscape [*contractor*] **construction professional**.

SECTION 19b. If both House Bill 2075 and House Bill 2076 become law, section 19 of this 2007 Act (amending ORS 671.570) is repealed and ORS 671.570, as amended by section 4, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076), and section 6, chapter _____, Oregon Laws 2007 (Enrolled House Bill 2075), is amended to read:

671.570. (1) Each person applying for a landscape [*contractor*] **construction professional** license must:

(a) Pay a nonrefundable application fee.

(b) Pay an examination fee.

(c) Pay to the State Landscape Contractors Board the landscape [*contractor*] **construction professional** license fee required by ORS 671.650.

(d) Pass an examination, which the board shall offer at least once each six months, to determine the fitness of the applicant for licensing and within 10 years before the day the application for a license is made:

(A) Have at least 24 months of employment with a [*landscaping*] **landscape contracting** business; or

(B) Have at least 12 months of employment with a [*landscaping*] **landscape contracting** business and one full year of training in an area related to landscaping at an accredited school or college.

(e) Be employed by, or own, a [*landscaping*] **landscape contracting** business if performing landscaping work.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules allowing a person who does not meet the education and experience requirements in subsection (1)(d) of this section to substitute other education and experience that demonstrate the fitness of the person for licensing as a landscape [*contractor*] **construction professional**.

SECTION 19c. If House Bill 2076 becomes law and House Bill 2075 does not become law, section 2, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076), is amended to read:

Sec. 2. (1) Notwithstanding ORS 671.570, the State Landscape Contractors Board may issue a probationary landscape [*contractor*] **construction professional** license to a person who does not meet the training and experience qualifications set forth in ORS 671.570. To obtain a probationary landscape [*contractor*] **construction professional** license, the person must:

- (a) Pay a nonrefundable application fee;
- (b) Pay an examination fee;
- (c) Pay to the board the landscape [*contractor's*] **construction professional** license fee required by ORS 671.650; and
- (d) Pass all sections of the examination described in ORS 671.570 within 12 months after first taking the examination.

(2) Two or more years after receiving a probationary landscape [*contractor*] **construction professional** license, a probationary landscape [*contractor*] **construction professional** may obtain removal from probationary status and issuance of a landscape [*contractor's*] **construction professional** license if the probationary landscape [*contractor*] **construction professional** presents the board with proof that the probationary landscape [*contractor*] **construction professional** has done any of the following:

(a) Completed at least 24 months of employment with a licensed [*landscaping*] **landscape contracting** business under the direct supervision of a landscape [*contractor*] **construction professional**.

(b) Provided supervision described in ORS 671.540 (15) or 671.565 (1)(b) for at least 24 months as the owner or employee of a licensed [*landscaping*] **landscape contracting** business that, during that period:

(A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of \$15,000; and

(B) Performed landscaping work only on landscaping projects where the amount charged by the [*landscaping*] **landscape contracting** business for work on the project during any 12-month period did not exceed \$15,000.

(c) Actively operated for at least 24 months as a construction contractor licensed under ORS chapter 701.

(3) Except as provided in this section and ORS 671.560 and as the board may provide by rule, a probationary landscape [*contractor*] **construction professional** licensed under this section is for all purposes a landscape [*contractor*] **construction professional** licensed under ORS 671.560.

SECTION 19d. If both House Bill 2075 and House Bill 2076 become law, section 2, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076), as amended by section 5, chapter _____, Oregon Laws 2007 (Enrolled House Bill 2075), is amended to read:

Sec. 2. (1) Notwithstanding ORS 671.570, the State Landscape Contractors Board may issue a probationary landscape [*contractor*] **construction professional** license to a person who does not meet the training and experience qualifications set forth in ORS 671.570. To obtain a probationary landscape [*contractor*] **construction professional** license, the person must:

- (a) Pay a nonrefundable application fee;
- (b) Pay an examination fee;
- (c) Pay to the board the landscape [*contractor*] **construction professional** license fee required by ORS 671.650; and

(d) Pass all sections of the examination described in ORS 671.570 within 12 months after first taking the examination.

(2) Two or more years after receiving a probationary landscape [contractor] **construction professional** license, a probationary landscape [contractor] **construction professional** may obtain removal from probationary status and issuance of a landscape [contractor] **construction professional** license if the probationary landscape [contractor] **construction professional** presents the board with proof that the probationary landscape [contractor] **construction professional** has done any of the following:

(a) Completed at least 24 months of employment with a licensed [landscaping] **landscape contracting** business under the direct supervision of a landscape [contractor] **construction professional**.

(b) Provided supervision described in ORS 671.540 (15) or 671.565 (1)(b) for at least 24 months as the owner or employee of a licensed [landscaping] **landscape contracting** business that, during that period:

(A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of \$15,000; and

(B) Performed landscaping work only on landscaping projects where the amount charged by the [landscaping] **landscape contracting** business for work on the project during any 12-month period did not exceed \$15,000.

(c) Actively operated for at least 24 months as a construction contractor licensed under ORS chapter 701.

(3) Except as provided in this section and ORS 671.560 and as the board may provide by rule, a probationary landscape [contractor] **construction professional** licensed under this section is for all purposes a landscape [contractor] **construction professional** licensed under ORS 671.560.

SECTION 20. ORS 671.574 is amended to read:

671.574. (1) If a landscape [contractor] **construction professional** is not operating as a landscape [contractor] **construction professional**, the State Landscape Contractors Board may, upon request, place the license of the landscape [contractor] **construction professional** in inactive status.

(2) A landscape [contractor] **construction professional** in inactive status remains subject to board jurisdiction, licensing requirements and fees.

(3) A landscape [contractor] **construction professional** that is in inactive status may not perform or supervise work as a landscape [contractor] **construction professional**.

(4) A landscape [contractor] **construction professional** license may not be placed or maintained in inactive status more than once during a licensing period.

SECTION 21. ORS 671.575 is amended to read:

671.575. (1) A [landscaping] **landscape contracting** business may not file a lien, file a claim with the State Landscape Contractors Board or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract for work [which] **that** is subject to ORS 671.510 to 671.710 and 671.997, unless the [landscaping] **landscape contracting** business was:

(a) Licensed under ORS 671.510 to 671.710 [and 671.997] at the time the [landscaping] **landscape contracting** business bid or entered into the contract for performance of the work; and

(b) Licensed continuously while performing the work for which compensation is sought.

(2) If the court determines that the [landscaping] **landscape contracting** business was not aware of the requirement that the [contractor be registered] **business be licensed**, a court may choose not to apply subsection (1) of this section if the court finds that to do so would result in a substantial injustice to the unlicensed [landscaping] **landscape contracting** business.

(3) If a [landscaping] **landscape contracting** business falsely swears to information provided under ORS 671.560 or 671.565 or knowingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565, the [landscaping] **landscape contracting** business may not file a lien, file a claim with the State Landscape Contractors Board or bring or maintain in any court of this state a suit or

action for compensation for the performance of any work or for the breach of any contract for work [which] that is subject to ORS 671.510 to 671.710 and 671.997.

SECTION 22. ORS 671.580 is amended to read:

671.580. A landscape [contractor's] **construction professional** license issued pursuant to ORS 671.560 is a personal privilege and is not transferable.

SECTION 23. ORS 671.590 is amended to read:

671.590. The State Landscape Contractors Board may license without examination any person who is a landscape [contractor] **construction professional** licensed, certified or registered under the laws of another state, territory of the United States, the District of Columbia or another country where the requirements on the date the applicant was licensed, certified or registered were substantially equal to the requirements for licensing of landscape [contractors] **construction professionals** in this state on the date of application by the person.

SECTION 24. ORS 671.600 is amended to read:

671.600. (1) A new **landscape contracting business** license shall be required whenever there is a change in ownership, irrespective of whether the business name is changed. **As used in this subsection, "change in ownership" does not include a change in the holders of corporate stock.**

(2) If a licensee moves to another location, relicensing is not required but the licensee must notify the State Landscape Contractors Board promptly of the new address.

SECTION 25. ORS 671.603 is amended to read:

671.603. (1) A landscape [contractor] **construction professional** or person operating as a [landscaping] **landscape contracting** business shall notify the State Landscape Contractors Board of a change of address for the [contractor] **professional** or business that occurs while the [contractor] **professional** or business is licensed by the board or within one year after a license expires. The landscape [contractor] **construction professional** or [landscaping] **landscape contracting** business shall ensure that the board receives notice of the change of address no later than the 10th day after the change of address occurs.

(2) Initial notice of a contested case or arbitration directed by the board to the last-known address of record for a landscape [contractor] **construction professional** or [landscaping] **landscape contracting** business is considered delivered to the [contractor] **professional** or business when deposited in the United States mail and sent registered, certified or post office receipt secured. Any other communication directed by the board to the last-known address of record for a landscape [contractor] **construction professional** or [landscaping] **landscape contracting** business is considered delivered to the [contractor] **professional** or business when deposited in the United States mail, regular mail.

SECTION 26. ORS 671.605 is amended to read:

671.605. A [licensed] partnership or corporation **licensed as a landscape contracting business** shall notify the State Landscape Contractors Board immediately upon any change in partners or [corporate officers] **corporate owners or in the percentage of an ownership interest in the landscape contracting business**. Upon a change in partners, a licensed partnership immediately shall **apply for a new** license [again] and pay to the board the fee required by ORS 671.650 for an original license.

SECTION 27. ORS 671.607 is amended to read:

671.607. (1) As used in this section:

(a) [Landscaping] **Landscape contracting** business debt" means an amount owed under:

(A) A final order or arbitration award issued [by the State Landscape Contractors Board for a claim filed] under ORS 671.703; or

(B) A judgment or civil penalty arising from [landscaping] **landscape contracting** business activities in any state.

(b) [Landscaping] **Landscape contracting** business license" means a license issued within the United States to engage in a [landscaping] **landscape contracting** business.

(c) "Officer" means any of the following persons:

- (A) A president, vice president, secretary, treasurer or director of a corporation.
- (B) A general partner in a limited partnership.
- (C) A manager in a manager-managed limited liability company.
- (D) A member of a member-managed limited liability company.
- (E) A trustee.

(F) A person qualifying as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this paragraph who may exercise substantial control over a business.

(d) "Owner" means a sole proprietor of, general partner in or holder of a controlling interest in a business, or a person defined as an owner by board rule.

(2) The board shall adopt rules defining an owner for purposes of subsection (1) of this section. The rules may not define an owner in a manner that includes an investor who has no right to manage a business, including but not limited to:

- (a) A person who is solely a minority shareholder in a corporation;
- (b) A member of a manager-managed limited liability company; or

(c) A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership.

(3) The board may suspend or refuse to issue a *[landscaping]* **landscape contracting** business license if:

(a) The business owes a *[landscaping]* **landscape contracting** business debt or has had a *[landscaping]* **landscape contracting** business license revoked;

(b) An owner or officer of the *[landscaping]* **landscape contracting** business owes a *[landscaping]* **landscape contracting** business debt or has had a *[landscaping]* **landscape contracting** business license revoked; or

(c) An owner or officer of the *[landscaping]* **landscape contracting** business was an owner or officer of another business at the time the other business incurred a *[landscaping]* **landscape contracting** business debt that is owing or at the time of an event that resulted in the revocation of the other business's *[landscaping]* **landscape contracting** business license.

(4) The board may hold the suspension or refusal of a license under subsection (3) of this section in abeyance if the person owing a *[landscaping]* **landscape contracting** business debt is adhering to a board-approved plan for restitution of the amount owed.

SECTION 28. ORS 671.610 is amended to read:

671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape *[contractor]* **construction professional** or *[landscaping]* **landscape contracting** business that does any of the following:

(a) Obtains or attempts to obtain a license under ORS 671.510 to 671.710 by fraud or material misrepresentation.

(b) Makes a material misrepresentation about the quality of any material or service the person provides.

(c) Performs defective work.

(d) Furnishes defective materials.

(e) Makes misleading statements when advertising services or materials.

(f) Violates a provision of ORS 671.510 to 671.710.

(g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termination, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS 671.690.

(h) Fails to maintain public liability, personal injury and property damage insurance as required by ORS 671.565 throughout a licensing period.

(i) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

(j) Performs work for which a permit is required under the state building code without obtaining the required permit, if the work results in the filing of a claim with the board.

- (k) Violates a rule or order of the board.
 - (L) Refuses to comply with a subpoena issued by the board.
 - (m) Fails to pay in full any amount owed to a claimant under a final order of the board or an arbitration award, or under a judgment rendered in this or any other state.
 - (n) Does not make payment, including any interest due, for labor or materials contracted for by the person pursuant to a contract for a public improvement within 90 days after the date the person receives payment from a public contracting agency or, if the person is a subcontractor, from the contractor.
 - (o) Engages in conduct as a landscape [*contractor*] **construction professional** or [*landscaping*] **landscape contracting** business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.
 - (p) Fails to comply with the requirements of ORS 652.120.
 - (q) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the facts supporting the conviction and all intervening circumstances make the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS 670.280.
- (2) The board may suspend or refuse to renew the license of a landscape [*contractor*] **construction professional** or [*landscaping*] **landscape contracting** business without prior hearing if, after investigating and setting forth in writing the facts supporting the action, the board determines that continued activity by the landscape [*contractor*] **construction professional** or [*landscaping*] **landscape contracting** business poses an imminent threat of serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew under this subsection include, but are not limited to:
- (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;
 - (b) The lack of public liability, personal injury or property damage insurance required under ORS 671.565;
 - (c) The hiring of employees while [*registered*] **licensed** as exempt under ORS 671.525;
 - (d) Conduct as a landscape [*contractor*] **construction professional** or a [*landscaping*] **landscape contracting** business that is dishonest; or
 - (e) Operation of a [*landscaping*] **landscape contracting** business that does not employ at least one licensed landscape [*contractor*] **construction professional**.
- (3) A person whose license is suspended or refused renewal under subsection (2) of this section may request a hearing within 90 days after receiving the notice of the suspension or refusal to renew. Except as provided in this subsection, the board shall give a contested case hearing requested under this subsection priority over other hearings and schedule the hearing for the earliest practicable date. If a citation is issued to the person and the order of suspension or refusal to renew will terminate by its terms if a court renders a final judgment regarding the citation in favor of the person, the person may request that the board hold the requested contested case hearing in abeyance until after the court has rendered a final judgment.
- (4) A person whose license is revoked under this section is not eligible to apply for a license under ORS 671.510 to 671.710 until two years after the effective date of the revocation.
- (5) The board may suspend, revoke or refuse to reissue the license of a [*landscaping*] **landscape contracting** business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board determines, after notice and opportunity for a hearing, that the [*landscaping*] **landscape contracting** business was working with other [*landscaping*] **landscape contracting** businesses on the same task and work site where one of the [*landscaping*] **landscape contracting** businesses is [*registered*] **licensed** as an exempt independent contractor under ORS 671.525 (2)(b) and the total number of [*landscaping*] **landscape contracting** businesses working on the task exceeded:
- (a) Two sole proprietors;
 - (b) One partnership;
 - (c) One corporation; or

(d) One limited liability company.

SECTION 28a. If Senate Bill 63 becomes law, section 2, chapter 151, Oregon Laws 2007 (Enrolled Senate Bill 63), is amended to read:

Sec. 2. An applicant for the issuance or renewal of a landscape [contractor] **construction professional** license or [landscaping] **landscape contracting** business license shall include in the application to the State Landscape Contractors Board notice of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any jurisdiction that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work. The board may adopt rules that require an applicant to provide additional information regarding a judgment, arbitration award or agency final order described in this section and the status of any appeal or exceptions.

SECTION 29. ORS 671.613 is amended to read:

671.613. (1) The failure of a [landscaping] **landscape contracting** business to comply with the provisions of this section and ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600, [671.520,] 671.525, 671.530 and 671.575 or to be in conformance with the provisions of ORS 279.835 to 279.855 or ORS chapter 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension of the [landscaping] **landscape contracting** business license, revocation of the [landscaping] **landscape contracting** business license, refusal to issue or reissue a [landscaping] **landscape contracting** business license, assessment of a civil penalty as set forth in ORS 671.997 or a combination of these sanctions.

(2) Any action against a [landscaping] **landscape contracting** business under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

SECTION 30. ORS 671.614 is amended to read:

671.614. (1) The State Landscape Contractors Board may issue an order placing a [landscaping] **landscape contracting** business, or any landscape [contractor] **construction professional** that is employed by the [landscaping] **landscape contracting** business or is a [landscaping] **landscape contracting** business owner or officer as defined in ORS 671.607, on probation if three or more claims are filed against the [landscaping] **landscape contracting** business's bond, letter of credit or deposit within a 12-month period.

(2) The board may place a [landscaping] **landscape contracting** business or landscape [contractor] **construction professional** on probation under this section only if the board determines after investigation of the complaints that a significant likelihood exists that continued activity by the [landscaping] **landscape contracting** business or landscape [contractor] **construction professional** without board supervision will result in additional claims against the [landscaping] **landscape contracting** business.

(3) The board may require as a condition of probation imposed under this section that the landscape [contractor] **construction professional** take a board-approved education course in one or more subjects relating to landscape [contracting] **operations**.

(4) The board may require as a condition of probation imposed under this section that the owner or officer of the [landscaping] **landscape contracting** business take a board-approved education course in one or more subjects relating to [landscaping] **landscape contracting** business or general business practices.

(5) The board may take action to suspend, revoke or refuse to renew the license of the [landscaping] **landscape contracting** business or landscape [contractor] **construction professional** if the [contractor or] business **or professional** fails to fulfill the terms of the probation.

SECTION 31. ORS 671.615 is amended to read:

671.615. The State Landscape Contractors Board may license a landscape [contractor] **construction professional** to install backflow assemblies for irrigation systems and ornamental water features. The board, by rule, shall establish qualifications for issuance of a license under this section. A landscape [contractor] **construction professional** may install a backflow assembly only if the landscape [contractor] **construction professional** is licensed under this section **and is the owner of, or employed by, a licensed landscape contracting business**. A landscape [contractor] **construction professional** installing a backflow assembly may tap into the potable water supply

only at a point after the connection between the water system and the customer, as that connection is defined in ORS 448.115.

SECTION 32. ORS 671.625 is amended to read:

671.625. (1) The State Landscape Contractors Board shall by rule adopt minimum standards for written contracts and billings of the [*landscaping*] **landscape contracting** businesses. The standards shall set forth requirements for information that must be contained in contracts and billings. The information required shall be any information the board determines is necessary to provide protection for consumers of the services and materials provided by [*landscaping*] **landscape contracting** businesses.

(2) Work by a [*landscaping*] **landscape contracting** business subject to ORS 671.510 to 671.710 shall only be performed subject to a written contract. Any contract or billing for such work must conform to the standards adopted under subsection (1) of this section.

(3) A contract that does not substantially comply with this section may not be enforced by a [*landscaping*] **landscape contracting** business in any court or other proceedings within this state.

SECTION 33. ORS 671.650 is amended to read:

671.650. (1) The State Landscape Contractors Board shall establish fees, including but not limited to annual landscape [*contractor's*] **construction professional** license fees and annual [*landscaping*] **landscape contracting** business license fees.

(2) The license fee for an out-of-state [*landscaping*] **landscape contracting** business operating in Oregon must be the same as for an Oregon [*landscaping*] **landscape contracting** business.

SECTION 34. ORS 671.660 is amended to read:

671.660. (1) The fee for renewal of a license issued under ORS 671.510 to 671.710 shall be paid annually on or before the last day of the month of the anniversary of issuance.

(2) A person who has been previously licensed under ORS 671.510 to 671.710 and whose license has expired shall not be issued another license except upon written application to the State Landscape Contractors Board with the required annual fee. The board may require the person to also pay a penalty fee.

(3) If a license lapses for two years or more, the [*individual or business*] **person** must reapply as for initial issuance of the license.

(4) When a **landscape contracting** business renews its license the business must submit the names of all employees who are licensed landscape [*contractors*] **construction professionals**.

(5) When a person renews a landscape [*contractor's*] **construction professional** license, the person must submit the name of the employer if the person is currently performing landscaping work.

SECTION 35. ORS 671.690 is amended to read:

671.690. (1) An applicant for a license as a [*landscaping*] **landscape contracting** business shall file with the State Landscape Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008. The amount of the bond or letter of credit shall be:

(a) \$3,000 for an applicant, unless the applicant is described in paragraph (b), (c) or (d) of this subsection.

(b) \$10,000 for an applicant who, not in conjunction with the performance of landscaping work, constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls, unless the applicant is made subject to paragraph (d) of this subsection by work on other jobs performed by the applicant.

(c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a landscape job.

(d) \$15,000 for an applicant who charges \$25,000 or more for a landscape job.

(2) The bond or letter of credit required under subsection (1) of this section shall be conditioned that the applicant pays:

(a) All taxes and contributions due to the State of Oregon;

(b) All persons furnishing labor or material, or renting or supplying equipment to the **landscape contracting** business;

(c) All amounts that may be adjudged against the **landscape contracting** business by reason of negligent or improper work or breach of contract in performing any work subject to ORS 671.510 to 671.710; and

(d) All amounts from the bond, letter of credit or deposit the board orders paid under ORS 671.703.

(3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the *[landscaping]* **landscape contracting** business may file with the board, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the board.

(4) The bond, letter of credit or deposit required by this section must be continuously on file with the board in the amount required by this section and is for the exclusive purpose of payment of final orders and arbitration awards *[of the board]* in accordance with ORS 671.703. Upon termination or cancellation of the bond, withdrawal of the deposit or reduction of the bond, letter of credit or deposit to less than the required amount, the licensee shall immediately:

(a) File a replacement bond, letter of credit or deposit; or

(b) Surrender the license to the board and cease operating as a *[landscaping]* **landscape contracting** business.

(5) If the cost of a project makes, or foreseeably will make, a licensee subject to a higher bond or letter of credit requirement under subsection (1) of this section, the licensee shall immediately file additional bonds, letters of credit or deposits to meet the higher requirements.

(6) The *[landscaping]* **landscape contracting** business is responsible for all work that is subject to ORS 671.510 to 671.710.

SECTION 36. ORS 671.700 is amended to read:

671.700. A person having a claim against a *[landscaping]* **landscape contracting** business shall give the State Landscape Contractors Board notice of the claim in writing 90 days before any action on the bond or deposit is commenced.

SECTION 36a. If Senate Bill 62 becomes law, section 36 of this 2007 Act (amending ORS 671.700) is repealed and ORS 671.700, as amended by section 6, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62), is amended to read:

671.700. (1) If a claim is filed with the State Landscape Contractors Board against a licensed *[landscaping]* **landscape contracting** business for payment from the bond, letter of credit or deposit required of the business under ORS 671.690, the board may resolve the dispute involving the *[landscaping]* **landscape contracting** business.

(2) A person having a claim against a *[landscaping]* **landscape contracting** business shall give the board notice of the claim in writing 90 days before any action on the bond, letter of credit or deposit is commenced.

(3) The board may not accept a claim against a *[landscaping]* **landscape contracting** business for processing if the claim is not filed with the board within one year after the business substantially completed work. The board may not issue an order for the payment of a court judgment or arbitration award from the bond, letter of credit or deposit of a *[landscaping]* **landscape contracting** business unless the person has timely filed with the board a claim against the business regarding the same matter that resulted in the judgment or award.

SECTION 37. ORS 671.703 is amended to read:

671.703. (1) If a person has a claim against a licensed *[landscaping]* **landscape contracting** business for negligent or improper work performed by the *[landscaping]* **landscape contracting** business, or for alleged breach of contract by the *[landscaping]* **landscape contracting** business, the person may file the claim with the State Landscape Contractors Board.

(2) Upon receipt of a claim that qualifies under subsection (1) of this section, the board shall initiate an investigation. Upon completion of the investigation, if the board determines that facts exist supporting an order for payment, the board may order the *[landscaping]* **landscape contracting**

ing business to pay the claim. A party to the claim may request a hearing on the order issued by the board.

(3) Subject to subsection (6) of this section, if the resolution of a claim under this section requires a hearing, the board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (5) of this section.

(4) The board may use arbitration to resolve a landscaping dispute between any parties who agree to follow the rules of the board, including parties to a dispute not described under subsection (1) of this section.

(5) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (3) and (4) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with ORS 671.510 to 671.710;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and

(e) Include any other provision necessary to conform the arbitration to ORS 671.510 to 671.710.

(6) A party to a claim that is subject to a board order of binding arbitration under subsection (3) of this section may avoid the arbitration if the party requests to have the claim resolved through a contested case hearing or files a complaint in a court. A party making a request or filing a complaint under this subsection is subject to the following provisions:

(a) If the party requests to have a claim resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a complaint in a court, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by the board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed by the licensed [*landscaping*] **landscape contracting** business against whom a claim is alleged, the complaint may be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the claimant to file a response alleging the elements of the claim. The claimant has the burden of proving the elements of the claim in any action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or complaint under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a complaint in compliance with paragraph (b) of this subsection, the filing of the complaint supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a complaint.

(7) An arbitration conducted under subsection (3) or (4) of this section must be held before an administrative law judge acting as arbitrator. The administrative law judge assigned to act as arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator

is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

(8) If a party to a claim under subsection (1) of this section requests a contested case hearing, the board shall schedule the hearing. If a party requests that the claim be resolved by a court, the board shall suspend further processing of the claim until the claim is resolved by an appropriate court.

(9) If the claim is submitted for determination by a court, the board may require that the claimant provide status reports on the pending action. The board may dismiss or close a claim filed under subsection (1) of this section as established by rule of the board if the claimant fails to submit status reports on a pending action.

(10) *[The board shall issue a final order or arbitration award in a form that indicates the maximum amount payable from the deposit, bond or letter of credit. If the landscaping]* **If a final order or arbitration award is issued under this section and the landscape contracting** business does not pay the claim on or before the 30th day after receiving the *[board]* order or award, the board shall order the claim paid out of the deposit, bond or letter of credit filed under ORS 671.690.

(11) The board may dismiss or close a claim as established by rule of the board if:

(a) The claimant does not permit the person against whom the claim is filed to be present at any inspection made by the board; or

(b) The board determines that the person against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the person to comply with the recommendations. The board may dismiss or close a claim under this paragraph only if the person was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(12) The board may suspend processing a claim if the board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim.

SECTION 37a. If Senate Bill 62 becomes law, section 37 of this 2007 Act (amending ORS 671.703) is repealed and ORS 671.703, as amended by section 7, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62), is amended to read:

671.703. (1) Upon acceptance of a claim described in section 2, **chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62)** *[of this 2007 Act]*, the State Landscape Contractors Board shall initiate an investigation. Upon completion of the investigation, if the board determines that facts exist supporting an order for payment, the board may order the *[landscaping]* **landscape contracting** business to pay the claim. A party to the claim may request a hearing on the order issued by the board.

(2) Subject to subsection (5) of this section, if the resolution of the claim requires a hearing, the board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (4) of this section.

(3) The board may use arbitration, mediation or other forms of dispute resolution to resolve a landscaping dispute between any parties who agree to follow the rules of the board, including parties to a dispute that is not a claim described in section 2, **chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62)** *[of this 2007 Act]*.

(4) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (2) and (3) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with ORS 671.510 to 671.710;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and

(e) Include any other provision necessary to conform the arbitration to ORS 671.510 to 671.710.

(5) A party to a claim that is subject to a board order of binding arbitration under subsection (2) of this section may avoid the arbitration if the party requests to have the claim resolved through a contested case hearing or files a complaint in a court. A party making a request or filing a complaint under this subsection is subject to the following provisions:

(a) If the party requests to have a claim resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a complaint in a court, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by the board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed by the licensed [*landscaping*] **landscape contracting** business against whom a claim is alleged, the complaint may be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the claimant to file a response alleging the elements of the claim. The claimant has the burden of proving the elements of the claim in any action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or complaint under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a complaint in compliance with paragraph (b) of this subsection, the filing of the complaint supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a complaint.

(6) An arbitration conducted under subsection (2) or (3) of this section must be held before an administrative law judge acting as arbitrator. The administrative law judge assigned to act as arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

(7) If a party to a claim described in section 2, **chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62)**, [*of this 2007 Act*] requests a contested case hearing, the board shall schedule the hearing. If a party files a court action to determine the matter described in the claim, the board shall suspend further processing of the claim until the action is resolved by an appropriate court.

(8) If the matter described in a claim is submitted for determination by a court, the board may require that the claimant provide status reports on the pending action. The board may dismiss or close a claim described in section 2, **chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62)**, [*of this 2007 Act*] as established by rule of the board if the claimant fails to submit status reports on a pending action.

(9) [*The board shall issue a final order in a form that indicates the maximum amount that is payable from the bond, letter of credit or deposit to satisfy an order, arbitration award or judgment.*] If a **final order or arbitration award is issued under this section** and the [*landscaping*] **landscape contracting** business does not pay the claim on or before the 30th day after receiving the [*board*] order, the board shall order the claim paid out of the bond, letter of credit or deposit filed under ORS 671.690.

(10) The board may dismiss or close a claim as established by rule of the board if:

(a) The claimant does not permit the person against whom the claim is filed to be present at any on-site investigation made by the board; or

(b) The board determines that the person against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the person to comply with the recommendations. The board may dismiss or close a claim under this paragraph only if the person was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(11) The board may suspend processing a claim if the board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim.

SECTION 37b. If Senate Bill 62 becomes law, section 2, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62), is amended to read:

Sec. 2. A claim against a licensed [*landscaping*] **landscape contracting** business is payable from the bond, letter of credit or deposit required of the [*landscaping*] **landscape contracting** business under ORS 671.690 only if the claim arises from the performance, or a contract for the performance, of work that is subject to ORS 671.510 to 671.710. The claim must be of one or more of the following types:

(1) A claim against the [*landscaping*] **landscape contracting** business by the property owner or the owner's agent for any of the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A claim against the [*landscaping*] **landscape contracting** business by the property owner or the owner's agent to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 or 87.075 to 87.093. The State Landscape Contractors Board may reduce a claim described in this subsection by any amount the claimant owes the [*contractor*] **landscape contracting business**. The board shall process claims described in this subsection only if:

(a) The owner paid the [*landscaping*] **landscape contracting** business for work subject to ORS 671.510 to 671.710; and

(b) A lien established against the property of the owner under ORS 87.010 to 87.060 or 87.075 to 87.093 is filed because the [*landscaping*] **landscape contracting** business failed to pay the person claiming the lien for that person's contribution toward completion of the improvement.

(3) A claim against a licensed subcontractor by a licensed [*landscaping*] **landscape contracting** business or by a construction contractor licensed under ORS chapter 701, for any of the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(4) A claim by a person furnishing labor to a [*landscaping*] **landscape contracting** business.

(5) A claim, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to the [*landscaping*] **landscape contracting** business. The minimum limit set by the board may not be more than \$150.

(6) A claim by a subcontractor against the [*landscaping*] **landscape contracting** business for unpaid labor or materials arising out of a contract.

SECTION 38. ORS 671.707 is amended to read:

671.707. (1) If a final order of the State Landscape Contractors Board is not paid by the [*registrant*] **landscape contracting business**, the board shall notify the surety on the [*registrant's*] bond **of the business**.

(2) An order of the board that determines a claim under ORS 671.703 that becomes final by operation of law or on appeal and remains unpaid for 20 days after the order becomes final is an order in favor of the claimant against the [*registrant*] **landscape contracting business** and may be recorded with the county clerk in any county of this state.

(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

SECTION 38a. If Senate Bill 62 becomes law, section 38 of this 2007 Act (amending ORS 671.707) is repealed and ORS 671.707, as amended by section 8, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62), is amended to read:

671.707. (1) If a final order of the State Landscape Contractors Board is not paid by the [*landscaping*] **landscape contracting** business, the board shall notify the surety on the business's bond.

(2) An order of the board that determines a claim under ORS 671.703 that becomes final by operation of law or on appeal and remains unpaid for 20 days after the order becomes final is an order in favor of the claimant against the [*landscaping*] **landscape contracting** business and may be recorded with the county clerk in any county of this state.

(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

SECTION 39. ORS 671.710 is amended to read:

671.710. (1) Determinations by the State Landscape Contractors Board or judgments against the surety bond, letter of credit or deposit of a [*landscaping*] **landscape contracting** business for claims filed during a 90-day period shall be satisfied in the priority listed in subsections (2) to (4) of this section. The payment of a claim filed during a 90-day period has priority over any claim filed during a subsequent 90-day period. A 90-day period begins on the date the first claim is filed with the board. A subsequent 90-day period begins on the date the first claim is filed with the board after the close of the preceding 90-day period.

(2) Determinations and judgments as a result of claims filed within the 90-day period against a [*landscaping*] **landscape contracting** business by owners of property upon which landscaping work was performed, or was contracted to perform, have payment priority to the full extent of the bond, letter of credit or deposit over all other claims filed within that 90-day period.

(3) If the total of all claims against a [*landscaping*] **landscape contracting** business by owners of property under subsection (2) of this section does not exhaust the bond, letter of credit or deposit, amounts due as a result of all other claims filed within that 90-day period may be satisfied from the remainder of the bond, letter of credit or deposit.

(4) If the total of all claims against a [*landscaping*] **landscape contracting** business within a 90-day period exceeds the amount of the bond, letter of credit or deposit available for payment of those claims, payment from the bond, letter of credit or deposit shall be apportioned as the board determines, subject to the claim payment priorities established under this section.

(5) The bond, letter of credit or deposit may not be used to satisfy claims filed more than one year following the date the work was completed.

SECTION 40. ORS 671.997 is amended to read:

671.997. (1) Except as provided in subsection (4) of this section, a person who violates any provision of ORS 671.510 to 671.710 or a rule adopted pursuant to subsection (5) of this section or ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board a civil penalty in an amount determined by the board of not more than \$2,000 for each offense.

(2) The board shall impose civil penalties under this section as provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

(4) If a [*landscaping*] **landscape contracting** business commits an act described under ORS 671.610 (5), the board shall impose penalties and sanctions on both the [*landscaping*] **landscape contracting** business to which the contract is awarded and the [*landscaping*] **landscape contracting** business that awards the contract as follows:

(a) A civil penalty of not less than \$500 nor more than \$1,000 for a first offense;

- (b) A civil penalty of not less than \$1,000 nor more than \$2,000 for a second offense;
- (c) Suspension of license or refusal to reissue license for six months for a third offense;
- (d) Revocation of license for three years for a fourth offense; and
- (e) Permanent revocation of the [*landscaping*] **landscape contracting** business's license for a fifth offense.

(5) The board shall provide by rule a process and criteria that must be met for restoration of a license that has **not** been **permanently** revoked.

SECTION 41. ORS 701.005 is amended to read:

701.005. As used in this chapter:

- (1) "Board" means the Construction Contractors Board.
- (2) "Construction debt" means an amount owed under:
 - (a) A final order or arbitration award issued by the board; or
 - (b) A judgment or civil penalty arising from construction activities within the United States.
- (3) "Contractor" means a person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. "Contractor" includes general contractors, residential-only contractors and specialty contractors as defined in this section.
- (4) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. "General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.
- (5) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances thereto. "Home inspector" does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.
- (6) "Inspector" means a contractor registered with the board who inspects or otherwise provides services to a property owner or other contractor but does not substantively add to or subtract from a structure. "Inspector" includes but is not limited to a home inspector certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection inspector and backflow assembly tester certified under ORS 448.279. "Inspector" does not include city or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.
- (7) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.
- (8) "Licensed developer" means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:
 - (a) Engages in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;
 - (b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and
 - (c) Does not perform any construction work on the property.
- (9) "Officer" means any of the following persons:
 - (a) A president, vice president, secretary, treasurer or director of a corporation.
 - (b) A general partner in a limited partnership.
 - (c) A manager in a manager-managed limited liability company.
 - (d) A member of a member-managed limited liability company.
 - (e) A trustee.

(f) A person defined as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(10) "Residential-only contractor" means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. "Residential-only contractor" includes, but is not limited to:

(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures;

(b) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure;

(c) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure; or

(d) Any person except a landscape [*contractor*] **contracting business**, nurseryman, gardener or person engaged in the commercial harvest of forest products who is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(11) "Residential structure" means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part of a multistructure complex of buildings.

(12) "Small commercial structure" means a nonresidential structure that has a ground area of 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure.

(13) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS chapter 446.

SECTION 42. ORS 701.010 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(e) A [*landscaping*] **landscape contracting** business licensed under ORS 671.510 to 671.710 that constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets the applicable bonding requirements under ORS 671.690.

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

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

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

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

(10) A person involved in the movement of:

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

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

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

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

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

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

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

SECTION 43. ORS 701.013 is amended to read:

701.013. It is the intent of the Legislative Assembly to reduce the number of city business licenses that construction contractors [*and landscape contractors*] are required to obtain in order to conduct business in the Portland metropolitan area. It is the purpose of this section and ORS 701.015 to enable construction contractors [*and landscape contractors*] to secure from the metropolitan service district one business license that will permit the conduct of business by [*such*] **construction** contractors in cities in which the contractors perform a limited amount of work and in which they do not have a principal place of business. Furthermore, it is also the intent of the Legislative Assembly that this section and ORS 701.015 apply only to **construction** contractors engaged in the building trades and crafts [*and to landscape contractors*] without regard to any subsequent expansion of the jurisdiction of the Construction Contractors Board [*or State Landscape Contractors Board*]

over other trades and crafts. It is declared to be the policy of this state that, to the maximum extent possible consistent with the requirements of this section and ORS 701.015, the cities within the boundaries of the metropolitan service district be allowed to control the imposition of business license taxes and to maintain the level of revenues obtained from those taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect the construction business activity within the participating cities.

SECTION 44. ORS 701.015 is amended to read:

701.015. (1) A contractor [*or landscape contractor*] shall pay directly to any city within the boundaries of a metropolitan service district any business license tax imposed by the city when:

(a) The principal place of business of the contractor [*or the landscape contractor*] is within the city; or

(b) The principal place of business of the contractor [*or the landscape contractor*] is not within the city but the contractor [*or landscape contractor*] derives gross receipts of \$250,000 or more from business conducted within the boundaries of the city during the calendar year for which the business license tax is owed.

(2) A contractor [*or landscape contractor*] who conducts business during any year in any city within the boundaries of the metropolitan service district other than a city to which the contractor [*or landscape contractor*] has paid a business license tax for that year may apply for a business license from the metropolitan service district.

(3) When a contractor [*or landscape contractor*] obtains a business license from the metropolitan service district under subsection (2) of this section, if a city within the boundaries of the metropolitan service district other than a city to which the contractor [*or landscape contractor*] is required to directly pay a business license tax under subsection (1) of this section demands payment of a business license tax by the contractor [*or landscape contractor*], the city shall waive such payment upon presentation of proof by the contractor [*or landscape contractor*] that the contractor [*or landscape contractor*] has a business license issued by the metropolitan service district. Possession by the contractor [*or landscape contractor*] of a current business license issued by the metropolitan service district under subsection (2) of this section shall be proof sufficient to obtain the waiver described in this subsection.

(4) The metropolitan service district shall issue a business license to a contractor [*or landscape contractor*] when:

(a) The contractor [*or landscape contractor*] presents proof to the district that the contractor [*or landscape contractor*] has paid the business license tax imposed by each city within the boundaries of the district to which the contractor [*or landscape contractor*] must directly pay a business license tax under subsection (1) of this section; and

(b) The contractor [*or landscape contractor*] pays a license fee to the district. The license fee charged under this paragraph shall be twice the average business license tax charged contractors by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section.

(5) The metropolitan service district shall distribute the business license fees collected by the district under this section, less administrative expenses, to the cities that are located wholly or partly within the district and that collect a business license tax. In any year, each such city shall receive such share of the license fees as the number of residential building permits that it issued during that year bears to the total number of residential building permits that were issued during that year by all of the cities located wholly or partly within the district. Distribution of moneys under this subsection shall be made at least once in each year. The metropolitan service district shall determine the number of residential building permits issued by cities within the district from statistics and other data published by the State Housing Council.

(6) As used in this section:

(a) "Business license tax" means any fee paid by a person to a city or county for any form of license that is required by the city or county in order to conduct business in that city or county.

The term does not include any franchise fee or privilege tax imposed by a city upon a public utility under ORS 221.420 or 221.450 or any provision of a city charter.

(b) "Conducting business" means to engage in any activity in pursuit of gain including activities carried on by a person through officers, agents and employees as well as activities carried on by a person on that person's own behalf.

[(c) "Landscape contractor" means a person or business who is licensed under ORS 671.510 to 671.710 as a landscape contractor.]

[(d)] (c) "Principal place of business" means the location in this state of the central administrative office of a person conducting business in this state.

SECTION 45. Sections 46 to 48 of this 2007 Act are added to and made a part of ORS 671.510 to 671.710.

SECTION 46. The Legislative Assembly intends to reduce the number of city business licenses that a landscape contracting business must obtain to conduct business in the Portland metropolitan area. The purpose of this section and section 47 of this 2007 Act is to enable a landscape contracting business to secure from the metropolitan service district one business license that will permit the landscape contracting business to conduct business in cities in which the landscape contracting business performs a limited amount of work and in which it does not have a principal place of business. The Legislative Assembly also intends that this section and section 47 of this 2007 Act apply only to landscape contracting businesses without regard to any subsequent expansion of the jurisdiction of the State Landscape Contractors Board over other businesses. It is the policy of this state that, to the maximum extent possible consistent with the requirements of this section and section 47 of this 2007 Act, the cities within the boundaries of the metropolitan service district be allowed to control the imposition of business license taxes and to maintain the level of revenues obtained from those taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect the landscape contracting business activity within the participating cities.

SECTION 47. (1) As used in this section:

(a) "Business license tax" means any fee paid by a person to a city or county for any form of license that is required by the city or county in order to conduct business in that city or county. "Business license tax" does not mean a franchise fee or privilege tax imposed by a city upon a public utility under ORS 221.420 or 221.450 or under a city charter.

(b) "Conducting business" means engaging directly, or through officers, agents and employees, in an activity in pursuit of gain.

(c) "Principal place of business" means the location in this state of the central administrative office of a person conducting business in this state.

(d) "Within a metropolitan service district" means that city limits are wholly or partially inside district boundaries.

(2) A landscape contracting business shall pay directly to any city within a metropolitan service district any business license tax imposed by the city if:

(a) The landscape contracting business has its principal place of business within the city; or

(b) The landscape contracting business does not have its principal place of business within the city but derives gross receipts of \$250,000 or more from conducting business within the city during the calendar year for which the tax is owed.

(3) A landscape contracting business may apply for a business license from a metropolitan service district if the business conducts business in a city that is within the district but that is not a city to which the business directly pays a business license tax for that year.

(4) The metropolitan service district shall issue a business license to a landscape contracting business if:

(a) The business proves to the district that the business has directly paid the business license tax imposed by each city within the district to which the business must directly pay a business license tax; and

(b) The business pays a license fee to the district.

(5) The license fee charged under subsection (4) of this section shall be twice the average business license tax charged to landscape contracting businesses by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section.

(6) If a landscape contracting business is issued a business license by the metropolitan service district under subsection (4) of this section, and a city within the district other than a city described in subsection (2) of this section demands that the business pay a business license tax, the demanding city shall waive payment of the tax if the business proves by possession or otherwise that the business has a business license issued by the metropolitan service district for the calendar year for which the tax is owed.

(7) The metropolitan service district shall distribute the business license fees collected by the district under this section, less administrative expenses, to the cities within the district that collect a business license tax. In any year, each of the cities shall receive a share of the license fees based upon the proportion that the number of residential building permits the city issued during the year bears to the total number of residential building permits issued during the year by all of the cities within the district. The district shall determine the number of residential building permits issued by cities within the district from statistics and other data published by the State Housing Council. A district shall distribute moneys under this subsection at least once each year.

SECTION 48. (1) As used in this section, "business license tax" has the meaning given that term in section 47 of this 2007 Act.

(2) A city that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city is exempt from section 47 of this 2007 Act.

SECTION 49. (1) Sections 46 to 48 of this 2007 Act and the amendments to ORS 215.213, 215.283, 447.060, 448.279, 479.940, 571.045, 571.057, 571.250, 656.027, 671.321, 671.520, 671.525, 671.530, 671.540, 671.555, 671.560, 671.565, 671.568, 671.570, 671.574, 671.575, 671.580, 671.590, 671.600, 671.603, 671.605, 671.607, 671.610, 671.613, 671.614, 671.615, 671.625, 671.650, 671.660, 671.690, 671.700, 671.703, 671.707, 671.710, 671.997, 701.005, 701.010, 701.013 and 701.015 by sections 1 to 19b, 20 to 28, 29 to 37a and 38 to 44 of this 2007 Act do not limit or terminate any right, duty, obligation or disability acquired or incurred before the effective date of this 2007 Act under ORS 215.213, 215.283, 447.060, 448.279, 479.940, 571.045, 571.057, 571.250, 656.027, 671.321, 671.520, 671.525, 671.530, 671.540, 671.555, 671.560, 671.565, 671.568, 671.570, 671.574, 671.575, 671.580, 671.590, 671.600, 671.603, 671.605, 671.607, 671.610, 671.613, 671.614, 671.615, 671.625, 671.650, 671.660, 671.690, 671.700, 671.703, 671.707, 671.710, 671.997, 701.005, 701.010, 701.013 and 701.015 as set forth in the 2005 Edition of Oregon Revised Statutes.

(2) The amendments to section 2, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076), by sections 19c and 19d of this 2007 Act do not limit or terminate any right, duty, obligation or disability acquired or incurred before the effective date of this 2007 Act under section 2, chapter 111, Oregon Laws 2007 (Enrolled House Bill 2076).

(3) The amendments to section 2, chapter 151, Oregon Laws 2007 (Enrolled Senate Bill 63), by section 28a of this 2007 Act do not limit or terminate any right, duty, obligation or disability acquired or incurred before the effective date of this 2007 Act under section 2, chapter 151, Oregon Laws 2007 (Enrolled Senate Bill 63).

(4) The amendments to section 2, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62), by section 37b of this 2007 Act do not limit or terminate any right, duty, obligation or disability acquired or incurred before the effective date of this 2007 Act under section 2, chapter 149, Oregon Laws 2007 (Enrolled Senate Bill 62).

Passed by House March 5, 2007

Repassed by House June 5, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 1, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State