

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Changes terminology regarding individuals and businesses performing landscaping services.

Clarifies applicability of independent contractor tax identification number requirement. Requires partnerships and corporations licensed as landscape contracting business to report certain ownership changes. Adjusts language regarding false representation of licensure. Exempts stockholder changes in corporate landscape contracting business from business relicensing requirement. Corrects language regarding content of State Landscape Contractors Board final orders. Changes business license tax provisions applicable both to construction contractors and landscape contracting businesses to result in separately applicable provisions.

A BILL FOR AN ACT

1
2 Relating to landscaping; creating new provisions; and amending ORS 215.213, 215.283, 447.060,
3 448.279, 479.940, 571.045, 571.057, 571.250, 656.027, 671.321, 671.520, 671.525, 671.530, 671.540,
4 671.555, 671.560, 671.565, 671.568, 671.570, 671.574, 671.575, 671.580, 671.590, 671.600, 671.603,
5 671.605, 671.607, 671.610, 671.613, 671.614, 671.615, 671.625, 671.650, 671.660, 671.690, 671.700,
6 671.703, 671.707, 671.710, 671.997, 701.005, 701.010, 701.013 and 701.015.

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

8 **SECTION 1.** ORS 215.213 is amended to read:

9 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
10 Edition), the following uses may be established in any area zoned for exclusive farm use:

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

12 (b) Churches and cemeteries in conjunction with churches.

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

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

18 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
19 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
20 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
21 operator does or will require the assistance of the relative in the management of the farm use and
22 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
23 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
24 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
25 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
26 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
27 shall operate as a partition of the homesite to create a new parcel.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (f) Nonresidential buildings customarily provided in conjunction with farm use.
- 2 (g) Primary or accessory dwellings customarily provided in conjunction with farm use. For a
3 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-
4 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-
5 edged under ORS 197.251.
- 6 (h) Operations for the exploration for and production of geothermal resources as defined by ORS
7 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
8 compressors, separators and other customary production equipment for an individual well adjacent
9 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
10 an exception under ORS 197.732 (1)(a) or (b).
- 11 (i) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or
12 construction relating to such operations shall not be a basis for an exception under ORS 197.732
13 (1)(a) or (b).
- 14 (j) A site for the disposal of solid waste that has been ordered to be established by the Envi-
15 ronmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings
16 necessary for its operation.
- 17 (k) One manufactured dwelling or recreational vehicle, or the temporary residential use of an
18 existing building, in conjunction with an existing dwelling as a temporary use for the term of a
19 hardship suffered by the existing resident or a relative of the resident. Within three months of the
20 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-
21 ished or, in the case of an existing building, the building shall be removed, demolished or returned
22 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-
23 view of the hardship claimed under this paragraph. A temporary residence approved under this
24 paragraph is not eligible for replacement under paragraph (t) of this subsection.
- 25 (L) The breeding, kenneling and training of greyhounds for racing in any county with a popu-
26 lation of more than 200,000 in which there is located a greyhound racing track or in a county with
27 a population of more than 200,000 that is contiguous to such a county.
- 28 (m) Climbing and passing lanes within the right of way existing as of July 1, 1987.
- 29 (n) Reconstruction or modification of public roads and highways, including the placement of
30 utility facilities overhead and in the subsurface of public roads and highways along the public right
31 of way, but not including the addition of travel lanes, where no removal or displacement of buildings
32 would occur, or no new land parcels result.
- 33 (o) Temporary public road and highway detours that will be abandoned and restored to original
34 condition or use at such time as no longer needed.
- 35 (p) Minor betterment of existing public road and highway related facilities, such as maintenance
36 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous
37 public-owned property utilized to support the operation and maintenance of public roads and high-
38 ways.
- 39 (q) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has
40 been listed in a county inventory as historic property as defined in ORS 358.480.
- 41 (r) Creation of, restoration of or enhancement of wetlands.
- 42 (s) A winery, as described in ORS 215.452.
- 43 (t) Alteration, restoration or replacement of a lawfully established dwelling that:
44 (A) Has intact exterior walls and roof structure;
45 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to

1 a sanitary waste disposal system;

2 (C) Has interior wiring for interior lights;

3 (D) Has a heating system; and

4 (E) In the case of replacement:

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

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

27 (u) Farm stands if:

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

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

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

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

1 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
 2 ground.

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

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

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

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

16 (A) A public right of way;

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

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

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

26 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 27 the following uses may be established in any area zoned for exclusive farm use subject to ORS
 28 215.296:

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

32 (A) Consists of 20 or more acres; and

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

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

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

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

45 (c) Commercial activities that are in conjunction with farm use but not including the processing

1 of farm crops as described in subsection (1)(x) of this section.

2 (d) Operations conducted for:

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

5 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
6 sources subject to ORS 215.298;

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

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

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

22 (f) Golf courses.

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

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

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

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

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

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

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

8 (n) Home occupations as provided in ORS 215.448.

9 (o) Transmission towers over 200 feet in height.

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

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

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

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

19 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
20 dences.

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

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

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

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

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

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

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

1 showing all of the following:

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

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

8 (c) Complies with such other conditions as the governing body or its designee considers neces-
9 sary.

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

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

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

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

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

24 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-
25 tablished; and

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

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

37 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
38 1948, and July 1, 1983. For the purposes of this section:

39 (a) Only one lot or parcel exists if:

40 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-
41 scribed in this section; and

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

45 (b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including

1 but not limited to, lots, parcels or lots and parcels separated only by a public road.

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

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

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

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

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

14 **SECTION 2.** ORS 215.283 is amended to read:

15 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

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

17 (b) Churches and cemeteries in conjunction with churches.

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

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

23 (e) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 24 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,
 25 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
 26 operator does or will require the assistance of the relative in the management of the farm use and
 27 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
 28 Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel size requirements under ORS
 29 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
 30 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
 31 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
 32 shall operate as a partition of the homesite to create a new parcel.

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

35 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
 36 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
 37 compressors, separators and other customary production equipment for an individual well adjacent
 38 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
 39 an exception under ORS 197.732 (1)(a) or (b).

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

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

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

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

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

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

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

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

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

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

17 (r) Farm stands if:

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

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

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

28 (A) Has intact exterior walls and roof structure;

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

31 (C) Has interior wiring for interior lights;

32 (D) Has a heating system; and

33 (E) In the case of replacement:

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

1 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions
 2 and release statements filed under this paragraph; and

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

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

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

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

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

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

32 (A) A public right of way;

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

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

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

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

45 (2) The following nonfarm uses may be established, subject to the approval of the governing body

1 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

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

4 (b) Operations conducted for:

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

7 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
8 sources subject to ORS 215.298;

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

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

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

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

23 (e) Community centers owned by a governmental agency or a nonprofit community organization
24 and operated primarily by and for residents of the local rural community. A community center au-
25 thorized under this paragraph may provide services to veterans, including but not limited to emer-
26 gency and transitional shelter, preparation and service of meals, vocational and educational
27 counseling and referral to local, state or federal agencies providing medical, mental health, disability
28 income replacement and substance abuse services, only in a facility that is in existence on January
29 1, 2006. The services may not include direct delivery of medical, mental health, disability income
30 replacement or substance abuse services.

31 (f) Golf courses.

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

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

42 (i) Home occupations as provided in ORS 215.448.

43 (j) A facility for the primary processing of forest products, provided that such facility is found
44 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
45 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is

1 renewable. These facilities are intended to be only portable or temporary in nature. The primary
 2 processing of a forest product, as used in this section, means the use of a portable chipper or stud
 3 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
 4 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
 5 contiguous land where the primary processing facility is located.

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

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

17 (m) Transmission towers over 200 feet in height.

18 (n) Dog kennels not described in subsection (1)(j) of this section.

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

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

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

29 (r) Reconstruction or modification of public roads and highways involving the removal or dis-
 30 placement of buildings but not resulting in the creation of new land parcels.

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

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

36 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-
 37 dences.

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

39 (w) Expansion of existing county fairgrounds and activities directly relating to county
 40 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

41 (x) A living history museum related to resource based activities owned and operated by a gov-
 42 ernmental agency or a local historical society, together with limited commercial activities and fa-
 43 cilities that are directly related to the use and enjoyment of the museum and located within
 44 authentic buildings of the depicted historic period or the museum administration building, if areas
 45 other than an exclusive farm use zone cannot accommodate the museum and related activities or if

1 the museum administration buildings and parking lot are located within one quarter mile of an ur-
 2 ban growth boundary. As used in this paragraph:

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

6 (B) "Local historical society" means the local historical society recognized by the county gov-
 7 erning body and organized under ORS chapter 65.

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

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

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

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

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

21 **SECTION 3.** ORS 447.060 is amended to read:

22 447.060. (1) ORS 447.010 to 447.156 do not apply to a person:

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

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

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

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

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

43 **SECTION 4.** ORS 448.279 is amended to read:

44 448.279. (1) The Department of Human Services by rule shall establish a certification program
 45 for persons who inspect cross connections or test backflow assemblies. The program shall include

1 minimum qualifications necessary for a person to be certified to:

2 (a) Conduct a cross connection inspection; and

3 (b) Test a backflow assembly.

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

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

8 (b) [*Become licensed as a landscape contractor as provided*] **Be employed by a landscape con-**
9 **tracting business licensed** under ORS 671.510 to 671.710.

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

13 (a) Not be refundable; and

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

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

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

26 **SECTION 5.** ORS 479.940 is amended to read:

27 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following
28 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise
29 Residential Dwelling Code:

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

31 (b) Garage door openers;

32 (c) Vacuum systems;

33 (d) Audio and stereo systems;

34 (e) HVAC;

35 (f) Landscape sprinkler controls;

36 (g) Landscape lighting; and

37 (h) Doorbells.

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

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

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

1 Contractors Board. The identification card shall include the name of the installer, the name and
 2 State Landscape Contractors Board identification number of the [*landscaping*] **landscape contract-**
 3 **ing** business and the date of issue of the identification card. The card shall be carried by the in-
 4 staller at the job site when performing the allowed electric installations.

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

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

14 **SECTION 6.** ORS 571.045 is amended to read:

15 571.045. ORS 571.055 (1) and 571.057 do not apply to:

16 (1) Any person whose business consists only of retail sales to the ultimate consumer and the
 17 total of such sales of nursery stock does not exceed \$250 during a fiscal year. Except as provided
 18 in subsection (2) of this section, the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and
 19 571.991 apply at any time the sales of nursery stock exceed \$250 during a fiscal year.

20 (2) A person licensed as a [*landscaping*] **landscape contracting** business under ORS 671.560 and
 21 671.565 who does not grow plants, does not store plants except as provided by the State Department
 22 of Agriculture by rule, and acquires all plants from a nursery licensed under this chapter.

23 **SECTION 7.** ORS 571.057 is amended to read:

24 571.057. (1) Each person required to be licensed by ORS 571.055 shall make application for such
 25 license or for renewal thereof, on a form furnished by the State Department of Agriculture which
 26 shall contain:

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

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

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

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

36 (2) Each application for license shall be accompanied by a license fee as provided for by this
 37 section and any amounts required by ORS 571.075 (3). Such application shall not be a public record
 38 but shall be subject to audit and review by the department. An applicant for an original license or
 39 for a renewal license, without a full calendar year of prior nursery stock sales or purchase experi-
 40 ence upon which to base the fees, shall base such fees on an estimated annual gross dollar volume
 41 of sales or purchases of nursery stock by the applicant. Notwithstanding the provisions of ORS
 42 571.075, upon application by such person for a renewal of license for a subsequent year, the fees for
 43 the previous license year shall be adjusted to reflect the actual annual gross dollar volume of sales
 44 or purchases of nursery stock by such applicant. Any additional fees found to be due shall be paid
 45 to the department at the time of application for renewal of license, or the department shall refund

1 any overpayment found to be due the applicant.

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

7 (b) The license fees shall not be less than \$65 nor more than \$20,000. The millage rate shall be
 8 not less than one-tenth mill nor more than 5 mills. The fees shall be established in such amount as
 9 shall be sufficient to allow the department to administer and enforce the provisions of ORS 564.040,
 10 564.991, 571.005 to 571.230 and 571.991.

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

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

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

24 **SECTION 8.** ORS 571.250 is amended to read:

25 571.250. The State Landscape Contractors Board and the State Department of Agriculture shall
 26 enter into an interagency agreement to address how the board and the department shall ensure that
 27 licensed [*landscaping*] **landscape contracting** businesses comply with the provisions of this chapter.

28 **SECTION 9.** ORS 656.027 is amended to read:

29 656.027. All workers are subject to this chapter except those nonsubject workers described in
 30 the following subsections:

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

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

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

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

38 or

39 (B) The employment is in the course of the trade, business or profession of a nonsubject em-
 40 ployer.

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

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

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

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

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

9 (b) Sole proprietors actively [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*]
10 701.035. When labor or services are performed under contract for remuneration, notwithstanding
11 ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor
12 [*registered*] **licensed** under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities
13 subject thereto is conclusively presumed to be an independent contractor.

14 (8) Except as provided in subsection (23) of this section, partners who are not engaged in work
15 performed in direct connection with the construction, alteration, repair, improvement, moving or
16 demolition of an improvement on real property or appurtenances thereto. When labor or services
17 are performed under contract, the partnership must qualify as an independent contractor.

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

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

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

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

37 (A) Two corporate officers; or

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

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

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

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

44 (13) A person who has been declared an amateur athlete under the rules of the United States
45 Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for

1 performance of services as an athlete other than board, room, rent, housing, lodging or other rea-
 2 sonable incidental subsistence allowance, or any amateur sports official who is certified by a re-
 3 cognized Oregon or national certifying authority, which requires or provides liability and accident
 4 insurance for such officials. A roster of recognized Oregon and national certifying authorities will
 5 be maintained by the Department of Consumer and Business Services, from lists of certifying or-
 6 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-
 7 creation Society.

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

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

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

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

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

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

19 (16) A person engaged in the transportation of the public for recreational down-river boating
 20 activities on the waters of this state pursuant to a federal permit when the person furnishes the
 21 equipment necessary for the activity. As used in this subsection, "recreational down-river boating
 22 activities" means those boating activities for the purpose of recreational fishing, swimming or
 23 sightseeing utilizing a float craft with oars or paddles as the primary source of power.

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

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

29 (19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411,
 30 418, 430 or 443.

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

34 (21) A person performing services under a property tax work-off program established under ORS
 35 310.800.

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

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

1 (A) Two partners; or

2 (B) One partner for each 10 partnership employees.

3 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
4 656.005 (30), the partnership qualifies as an independent contractor. Any partnership [*registered*] **li-**
5 **censed** under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities subject thereto
6 is conclusively presumed to be an independent contractor.

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

15 (A) Two corporate officers; or

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

17 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
18 656.005 (30), the corporation qualifies as an independent contractor. Any corporation [*registered*] **li-**
19 **censed** under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities subject thereto
20 is conclusively presumed to be an independent contractor.

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

29 (A) Two company members; or

30 (B) One company member for each 10 company employees.

31 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
32 656.005 (30), the company qualifies as an independent contractor. Any company [*registered*] **licensed**
33 under ORS 671.525 or [*licensed under ORS*] 701.035 and involved in activities subject thereto is
34 conclusively presumed to be an independent contractor.

35 (26) A person serving as a referee or assistant referee in a youth or adult recreational soccer
36 match whose services are retained on a match-by-match basis.

37 (27) A person performing language translator or interpreter services that are provided for others
38 through an agent or broker.

39 **SECTION 10.** ORS 671.321 is amended to read:

40 671.321. (1) ORS 671.310 to 671.459, 671.992 and 671.995 do not restrict or otherwise affect the
41 right of any person to:

42 (a) Practice architecture under ORS 671.010 to 671.220;

43 (b) Practice engineering under ORS 672.002 to 672.325;

44 (c) Engage in the occupation of growing and marketing nursery stock, or use the title
45 “nurseryman” or “landscape nurseryman”;

1 (d) Operate as a landscape [*contractor*] **professional** or [*landscaping*] **landscape contracting**
 2 business under ORS 671.510 to 671.710 or use the title **“landscape professional”** or “landscape
 3 contractor”;

4 (e) Perform work described under ORS 671.540;

5 (f) Engage in making plans or drawings for the selection, placement or use of plants or other
 6 site features unless the plans or drawings are for the purpose of providing construction details and
 7 specifications not otherwise exempted;

8 (g) Use the title “landscape designer” in connection with activities described under paragraph
 9 (f) of this subsection;

10 (h) Make any plans, drawings or specifications for property owned by that person; or

11 (i) Provide recommendations or written specifications for soil amendments or planting mediums
 12 if the recommendations or specifications are solely for purposes of plant installation and do not
 13 significantly alter the stability of the soil profile or surface drainage patterns.

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

16 (a) Planning the development of land areas and elements used on land areas; or

17 (b) Performing services described in ORS 671.310 (5) and (6) in connection with the settings,
 18 approaches or environment for buildings, structures or facilities in accordance with legally estab-
 19 lished standards for public health, safety and welfare.

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

21 (a) The preparation of detailed or shop drawings that a construction contractor is required to
 22 furnish or the administration of construction contracts by a person customarily engaged in con-
 23 tracting work.

24 (b) The preparation of technical submissions or the administration of construction contracts by
 25 employees of a landscape architect or a landscape architecture business when acting under the di-
 26 rect supervision of a registered landscape architect.

27 (c) Employees of the federal government acting within the scope of that employment.

28 **SECTION 11.** ORS 671.520 is amended to read:

29 671.520. As used in ORS 671.510 to 671.710, unless the context requires otherwise:

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

33 [(1)] (2) “Landscape [*contractor*] **professional**” means any person who for compensation or with
 34 the intent to be compensated performs or supervises activities requiring the art, ability, experience,
 35 knowledge, science and skill to:

36 (a) Plan or install lawns, shrubs, vines, trees or nursery stock;

37 (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;

38 (c) Construct or repair ornamental water features, drainage systems or irrigation systems; or

39 (d) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or re-
 40 taining walls.

41 [(2)] “*Landscaping business*” means a business that for compensation or with the intent to be com-
 42 pensated arranges for or submits a bid or otherwise offers or contracts to provide the services of a
 43 landscape contractor.]

44 (3) “Licensee” means a person that is licensed under ORS 671.510 to 671.710 as a landscape
 45 [*contractor*] **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*] **professional** in this state without a valid landscape [*contractor’s*] **professional** license issued pursuant to ORS 671.560.

(2) A person may not represent in any manner that the person is a landscape [*contractor*] **professional** unless the person has a valid landscape [*contractor’s*] **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 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 professional**; and

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

1 business license issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is
 2 not limited to:

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

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

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

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

16 **SECTION 14.** ORS 671.540 is amended to read:

17 671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

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

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

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

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

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

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

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

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

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

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

43 (8) A general contractor licensed under ORS chapter 701 who performs landscaping work if the
 44 total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work
 45 is performed on residential property for which the contractor is under contract for the construction

1 of a new dwelling. The exception provided by this subsection does not apply to the performance of
 2 irrigation work by a general contractor. The State Landscape Contractors Board shall revise the
 3 amount specified in this subsection every five years, beginning in 2003, based on changes in the
 4 Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published
 5 by the Bureau of Labor Statistics of the United States Department of Labor.

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

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

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

15 (12) A person providing recommendations or written specifications for soil amendments or
 16 planting media if the recommendations or specifications are solely for the purpose of plant installa-
 17 tion.

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

20 (14) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS chapter
 21 701 when performing work that the contractor may perform under subsection (8) or (9) of this sec-
 22 tion.

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

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

29 **SECTION 15.** ORS 671.555 is amended to read:

30 671.555. (1) The State Landscape Contractors Board may investigate the activities of any person
 31 engaged in the [*landscaping*] **landscape contracting** business to determine compliance with ORS
 32 671.510 to 671.710.

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

36 (3) Any inspector **or investigator** authorized by the board to determine compliance with [*the*
 37 *provisions of*] ORS 671.510 to 671.710 [*is authorized to*] **may** require any person who is engaged in
 38 any activity regulated by ORS 671.510 to 671.710 to demonstrate proof of compliance with the [*reg-*
 39 *istration*] **licensing** requirements of ORS 671.510 to 671.710. If a person who is contracting directly
 40 with the owner of the property does not demonstrate proof of compliance with the [*license*] **licensing**
 41 requirements of ORS 671.510 to 671.710, the inspector [*shall*] **or investigator may** give notice of
 42 noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state
 43 that the person is not in compliance with the [*registration*] **licensing** requirements of ORS 671.510
 44 to 671.710 and shall provide that unless the person demonstrates proof of compliance within two
 45 days of the date of the notice, the inspector **or investigator** may by order stop all work then being

1 done by the person. The notice of noncompliance shall be served upon the person and shall be
 2 served upon or delivered to the owner of each property upon which the person is then performing
 3 work under contract. If more than one person is the owner of any such property, a copy of the no-
 4 tice need be given to only one of such persons. If after receipt of the notice of noncompliance the
 5 person fails within the two-day period specified in the notice to demonstrate proof of compliance
 6 with the [*registration*] **licensing** requirements of ORS 671.510 to 671.710, the inspector [*is authorized*
 7 *to*] **or investigator may** order the work stopped by notice in writing served on any persons engaged
 8 in the activity. Any person so notified shall stop such work until proof of compliance is demon-
 9 strated. However, the inspector **or investigator** may not order the work stopped until at least two
 10 days after the copies of the notice of noncompliance have been served upon or delivered to the
 11 owners.

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

17 (5) The board has the power to administer oaths, issue notices and subpoenas in the name of the
 18 board, compel the attendance of witnesses and the production of evidence, hold hearings and per-
 19 form such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to
 20 671.710.

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

24 **SECTION 16.** ORS 671.560 is amended to read:

25 671.560. (1) Except as provided in ORS 671.590, the State Landscape Contractors Board shall
 26 issue a landscape [*contractor's*] **professional** license to an applicant who satisfies the requirements
 27 of ORS 671.570.

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

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

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

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

38 **SECTION 17.** ORS 671.565 is amended to read:

39 671.565. (1) Each person applying for a [*landscaping*] **landscape contracting** business license
 40 shall:

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

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

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

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

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

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

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

14 **SECTION 18.** ORS 671.568 is amended to read:

15 671.568. (1) If a licensed *[landscaping]* **landscape contracting** business is not operating as a
 16 *[landscaping]* **landscape contracting** business, the State Landscape Contractors Board may, upon
 17 request, place the license of the *[landscaping]* **landscape contracting** business in inactive status.

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

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

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

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

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

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

30 **SECTION 19.** ORS 671.570 is amended to read:

31 671.570. Each person applying for a landscape *[contractor's]* **professional** license *[shall]* **must:**

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

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

35 *[(1)]* (3) Pass an examination, which *[shall be offered]* **the board shall offer** at least once each
 36 six months, *[by the board]* to determine the fitness of the applicant for licensing and *[have]:*

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

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

40 (B) Twelve months of employment with a *[landscape contractor]* **landscape contracting busi-**
 41 **ness** and one full year of training in an area related to landscaping at an accredited school or col-
 42 lege; or

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

45 *[(2)]* (4) Be employed by a *[landscaping]* **landscape contracting** business if performing land-

1 scaping work.

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

3 **SECTION 20.** ORS 671.574 is amended to read:

4 671.574. (1) If a landscape [*contractor*] **professional** is not operating as a landscape [*contractor*]
5 **professional**, the State Landscape Contractors Board may, upon request, place the license of the
6 landscape [*contractor*] **professional** in inactive status.

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

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

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

13 **SECTION 21.** ORS 671.575 is amended to read:

14 671.575. (1) A [*landscaping*] **landscape contracting** business may not file a lien, file a claim with
15 the State Landscape Contractors Board or bring or maintain in any court of this state a suit or
16 action for compensation for the performance of any work or for the breach of any contract for work
17 [*which*] **that** is subject to ORS 671.510 to 671.710 and 671.997, unless the [*landscaping*] **landscape**
18 **contracting** business was:

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

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

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

26 (3) If a [*landscaping*] **landscape contracting** business falsely swears to information provided
27 under ORS 671.560 or 671.565 or knowingly violates the provisions of ORS 656.029, 670.600, 671.560
28 or 671.565, the [*landscaping*] **landscape contracting** business may not file a lien, file a claim with
29 the State Landscape Contractors Board or bring or maintain in any court of this state a suit or
30 action for compensation for the performance of any work or for the breach of any contract for work
31 [*which*] **that** is subject to ORS 671.510 to 671.710 and 671.997.

32 **SECTION 22.** ORS 671.580 is amended to read:

33 671.580. A landscape [*contractor's*] **professional** license issued pursuant to ORS 671.560 is a
34 personal privilege and is not transferable.

35 **SECTION 23.** ORS 671.590 is amended to read:

36 671.590. The State Landscape Contractors Board may license without examination any person
37 who is a landscape [*contractor*] **professional** licensed, certified or registered under the laws of an-
38 other state, territory of the United States, the District of Columbia or another country where the
39 requirements on the date the applicant was licensed, certified or registered were substantially equal
40 to the requirements for licensing of landscape [*contractors*] **professionals** in this state on the date
41 of application by the person.

42 **SECTION 24.** ORS 671.600 is amended to read:

43 671.600. (1) A new **landscape contracting business** license shall be required whenever there
44 is a change in ownership, irrespective of whether the business name is changed. **As used in this**
45 **subsection, "change in ownership" does not include a change in the holders of corporate**

1 **stock.**

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

4 **SECTION 25.** ORS 671.603 is amended to read:

5 671.603. (1) A landscape [*contractor*] **professional** or person operating as a [*landscaping*] **land-**
 6 **scape contracting** business shall notify the State Landscape Contractors Board of a change of ad-
 7 dress for the [*contractor*] **professional** or business that occurs while the [*contractor*] **professional**
 8 or business is licensed by the board or within one year after a license expires. The landscape [*con-*
 9 *tractor*] **professional** or [*landscaping*] **landscape contracting** business shall ensure that the board
 10 receives notice of the change of address no later than the 10th day after the change of address oc-
 11 curs.

12 (2) Initial notice of a contested case or arbitration directed by the board to the last-known ad-
 13 dress of record for a landscape [*contractor*] **professional** or [*landscaping*] **landscape contracting**
 14 business is considered delivered to the [*contractor*] **professional** or business when deposited in the
 15 United States mail and sent registered, certified or post office receipt secured. Any other commu-
 16 nication directed by the board to the last-known address of record for a landscape [*contractor*]
 17 **professional** or [*landscaping*] **landscape contracting** business is considered delivered to the [*con-*
 18 *tractor*] **professional** or business when deposited in the United States mail, regular mail.

19 **SECTION 26.** ORS 671.605 is amended to read:

20 671.605. A [*licensed*] partnership or corporation **licensed as a landscape contracting business**
 21 shall notify the State Landscape Contractors Board immediately upon any change in partners or
 22 [*corporate officers*] **corporate owners or in the percentage of an ownership interest in the**
 23 **landscape contracting business.** Upon a change in partners, a licensed partnership immediately
 24 shall **apply for a new** license [*again*] and pay to the board the fee required by ORS 671.650 for an
 25 original license.

26 **SECTION 27.** ORS 671.607 is amended to read:

27 671.607. (1) As used in this section:

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

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

31 (B) A judgment or civil penalty arising from [*landscaping*] **landscape contracting** business ac-
 32 tivities in any state.

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

35 (c) “Officer” means any of the following persons:

36 (A) A president, vice president, secretary, treasurer or director of a corporation.

37 (B) A general partner in a limited partnership.

38 (C) A manager in a manager-managed limited liability company.

39 (D) A member of a member-managed limited liability company.

40 (E) A trustee.

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

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

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

- 4 (a) A person who is solely a minority shareholder in a corporation;
- 5 (b) A member of a manager-managed limited liability company; or
- 6 (c) A limited partner in a limited partnership who does not participate in the control of the
 7 business of the limited partnership.

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

- 10 (a) The business owes a [*landscaping*] **landscape contracting** business debt or has had a [*land-*
 11 *scaping*] **landscape contracting** business license revoked;
- 12 (b) An owner or officer of the [*landscaping*] **landscape contracting** business owes a [*landscap-*
 13 *ing*] **landscape contracting** business debt or has had a [*landscaping*] **landscape contracting** busi-
 14 ness license revoked; or
- 15 (c) An owner or officer of the [*landscaping*] **landscape contracting** business was an owner or
 16 officer of another business at the time the other business incurred a [*landscaping*] **landscape con-**
 17 **tracting** business debt that is owing or at the time of an event that resulted in the revocation of
 18 the other business's [*landscaping*] **landscape contracting** business license.

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

22 **SECTION 28.** ORS 671.610 is amended to read:

23 671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape
 24 Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape
 25 [*contractor*] **professional** or [*landscaping*] **landscape contracting** business that does any of the fol-
 26 lowing:

- 27 (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.710 by fraud or material
 28 misrepresentation.
- 29 (b) Makes a material misrepresentation about the quality of any material or service the person
 30 provides.
- 31 (c) Performs defective work.
- 32 (d) Furnishes defective materials.
- 33 (e) Makes misleading statements when advertising services or materials.
- 34 (f) Violates a provision of ORS 671.510 to 671.710.
- 35 (g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termi-
 36 nation, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS
 37 671.690.
- 38 (h) Fails to maintain public liability, personal injury and property damage insurance as required
 39 by ORS 671.565 throughout a licensing period.
- 40 (i) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.
- 41 (j) Performs work for which a permit is required under the state building code without obtaining
 42 the required permit, if the work results in the filing of a claim with the board.
- 43 (k) Violates a rule or order of the board.
- 44 (L) Refuses to comply with a subpoena issued by the board.
- 45 (m) Fails to pay in full any amount owed to a claimant under a final order of the board or an

1 arbitration award, or under a judgment rendered in this or any other state.

2 (n) Does not make payment, including any interest due, for labor or materials contracted for by
 3 the person pursuant to a contract for a public improvement within 90 days after the date the person
 4 receives payment from a public contracting agency or, if the person is a subcontractor, from the
 5 contractor.

6 (o) Engages in conduct as a landscape [*contractor*] **professional** or [*landscaping*] **landscape**
 7 **contracting** business that is dishonest or fraudulent or that the board finds injurious to the welfare
 8 of the public.

9 (p) Fails to comply with the requirements of ORS 652.120.

10 (q) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375,
 11 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or
 12 164.415, provided that the facts supporting the conviction and all intervening circumstances make
 13 the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS
 14 670.280.

15 (2) The board may suspend or refuse to renew the license of a landscape [*contractor*] **profes-**
 16 **sional** or [*landscaping*] **landscape contracting** business without prior hearing if, after investigating
 17 and setting forth in writing the facts supporting the action, the board determines that continued
 18 activity by the landscape [*contractor*] **professional** or [*landscaping*] **landscape contracting** business
 19 poses an imminent threat of serious harm to the public welfare. Facts sufficient to support a sus-
 20 pension or refusal to renew under this subsection include, but are not limited to:

21 (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

22 (b) The lack of public liability, personal injury or property damage insurance required under
 23 ORS 671.565;

24 (c) The hiring of employees while [*registered*] **licensed** as exempt under ORS 671.525;

25 (d) Conduct as a landscape [*contractor*] **professional** or a [*landscaping*] **landscape contracting**
 26 business that is dishonest; or

27 (e) Operation of a [*landscaping*] **landscape contracting** business that does not employ at least
 28 one licensed landscape [*contractor*] **professional**.

29 (3) A person whose license is suspended or refused renewal under subsection (2) of this section
 30 may request a hearing within 90 days after receiving the notice of the suspension or refusal to re-
 31 new. Except as provided in this subsection, the board shall give a contested case hearing requested
 32 under this subsection priority over other hearings and schedule the hearing for the earliest practi-
 33 cable date. If a citation is issued to the person and the order of suspension or refusal to renew will
 34 terminate by its terms if a court renders a final judgment regarding the citation in favor of the
 35 person, the person may request that the board hold the requested contested case hearing in abey-
 36 ance until after the court has rendered a final judgment.

37 (4) A person whose license is revoked under this section is not eligible to apply for a license
 38 under ORS 671.510 to 671.710 until two years after the effective date of the revocation.

39 (5) The board may suspend, revoke or refuse to reissue the license of a [*landscaping*] **landscape**
 40 **contracting** business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the
 41 board determines, after notice and opportunity for a hearing, that the [*landscaping*] **landscape**
 42 **contracting** business was working with other [*landscaping*] **landscape contracting** businesses on
 43 the same task and work site where one of the [*landscaping*] **landscape contracting** businesses is
 44 [*registered*] **licensed** as an exempt independent contractor under ORS 671.525 (2)(b) and the total
 45 number of [*landscaping*] **landscape contracting** businesses working on the task exceeded:

- 1 (a) Two sole proprietors;
- 2 (b) One partnership;
- 3 (c) One corporation; or
- 4 (d) One limited liability company.

5 **SECTION 29.** ORS 671.613 is amended to read:

6 671.613. (1) The failure of a [*landscaping*] **landscape contracting** business to comply with the
 7 provisions of this section and ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600, [*671.520,*] 671.525,
 8 671.530 and 671.575 or to be in conformance with the provisions of ORS 279.835 to 279.855 or ORS
 9 chapter 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension of the [*landscaping*] **land-**
 10 **scape contracting** business license, revocation of the [*landscaping*] **landscape contracting** business
 11 license, refusal to issue or reissue a [*landscaping*] **landscape contracting** business license, assess-
 12 ment of a civil penalty as set forth in ORS 671.997 or a combination of these sanctions.

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

15 **SECTION 30.** ORS 671.614 is amended to read:

16 671.614. (1) The State Landscape Contractors Board may issue an order placing a [*landscaping*]
 17 **landscape contracting** business, or any landscape [*contractor*] **professional** that is employed by the
 18 [*landscaping*] **landscape contracting** business or is a [*landscaping*] **landscape contracting** business
 19 owner or officer as defined in ORS 671.607, on probation if three or more claims are filed against
 20 the [*landscaping*] **landscape contracting** business’s bond, letter of credit or deposit within a
 21 12-month period.

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

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

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

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

37 **SECTION 31.** ORS 671.615 is amended to read:

38 671.615. The State Landscape Contractors Board may license a landscape [*contractor*] **profes-**
 39 **sional** to install backflow assemblies for irrigation systems and ornamental water features. The
 40 board, by rule, shall establish qualifications for issuance of a license under this section. A landscape
 41 [*contractor*] **professional** may install a backflow assembly only if the landscape [*contractor*] **profes-**
 42 **sional** is licensed under this section **and is the owner of, or employed by, a licensed landscape**
 43 **contracting business**. A landscape [*contractor*] **professional** installing a backflow assembly may tap
 44 into the potable water supply only at a point after the connection between the water system and the
 45 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]* **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]* **professionals**.

(5) When a person renews a landscape *[contractor's]* **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.

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

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

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

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

9 (d) All amounts from the bond, letter of credit or deposit the board orders paid under ORS
 10 671.703.

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

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

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

20 (b) Surrender the license to the board and cease operating as a [*landscaping*] **landscape con-**
 21 **tracting** business.

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

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

27 **SECTION 36.** ORS 671.700 is amended to read:

28 671.700. A person having a claim against a [*landscaping*] **landscape contracting** business shall
 29 give the State Landscape Contractors Board notice of the claim in writing 90 days before any action
 30 on the bond or deposit is commenced.

31 **SECTION 37.** ORS 671.703 is amended to read:

32 671.703. (1) If a person has a claim against a licensed [*landscaping*] **landscape contracting**
 33 business for negligent or improper work performed by the [*landscaping*] **landscape contracting**
 34 business, or for alleged breach of contract by the [*landscaping*] **landscape contracting** business, the
 35 person may file the claim with the State Landscape Contractors Board.

36 (2) Upon receipt of a claim that qualifies under subsection (1) of this section, the board shall
 37 initiate an investigation. Upon completion of the investigation, if the board determines that facts
 38 exist supporting an order for payment, the board may order the [*landscaping*] **landscape contract-**
 39 **ing** business to pay the claim. A party to the claim may request a hearing on the order issued by
 40 the board.

41 (3) Subject to subsection (6) of this section, if the resolution of a claim under this section re-
 42 quires a hearing, the board may require that the hearing be conducted as a binding arbitration un-
 43 der rules adopted by the board under subsection (5) of this section.

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

1 (1) of this section.

2 (5) Except as provided in this subsection, rules adopted by the board to regulate arbitration
 3 under subsections (3) and (4) of this section must substantially conform with the provisions of ORS
 4 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.
 5 The rules may:

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

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

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

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

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

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

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

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

30 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
 31 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
 32 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
 33 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
 34 tration.

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

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

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

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

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

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

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

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

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

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

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

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

27 **SECTION 38.** ORS 671.707 is amended to read:

28 671.707. (1) If a final order of the State Landscape Contractors Board is not paid by the *[regis-*
 29 *trant]* **landscape contracting business**, the board shall notify the surety on the *[registrant's]* bond
 30 **of the business**.

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

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

39 **SECTION 39.** ORS 671.710 is amended to read:

40 671.710. (1) Determinations by the State Landscape Contractors Board or judgments against the
 41 surety bond, letter of credit or deposit of a *[landscaping]* **landscape contracting** business for claims
 42 filed during a 90-day period shall be satisfied in the priority listed in subsections (2) to (4) of this
 43 section. The payment of a claim filed during a 90-day period has priority over any claim filed during
 44 a subsequent 90-day period. A 90-day period begins on the date the first claim is filed with the board.
 45 A subsequent 90-day period begins on the date the first claim is filed with the board after the close

1 of the preceding 90-day period.

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

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

10 (4) If the total of all claims against a [*landscaping*] **landscape contracting** business within a
 11 90-day period exceeds the amount of the bond, letter of credit or deposit available for payment of
 12 those claims, payment from the bond, letter of credit or deposit shall be apportioned as the board
 13 determines, subject to the claim payment priorities established under this section.

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

16 **SECTION 40.** ORS 671.997 is amended to read:

17 671.997. (1) Except as provided in subsection (4) of this section, a person who violates any pro-
 18 vision of ORS 671.510 to 671.710 or a rule adopted pursuant to subsection (5) of this section or ORS
 19 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board a civil
 20 penalty in an amount determined by the board of not more than \$2,000 for each offense.

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

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

24 (4) If a [*landscaping*] **landscape contracting** business commits an act described under ORS
 25 671.610 (5), the board shall impose penalties and sanctions on both the [*landscaping*] **landscape**
 26 **contracting** business to which the contract is awarded and the [*landscaping*] **landscape contract-**
 27 **ing** business that awards the contract as follows:

- 28 (a) A civil penalty of not less than \$500 nor more than \$1,000 for a first offense;
- 29 (b) A civil penalty of not less than \$1,000 nor more than \$2,000 for a second offense;
- 30 (c) Suspension of license or refusal to reissue license for six months for a third offense;
- 31 (d) Revocation of license for three years for a fourth offense; and
- 32 (e) Permanent revocation of the [*landscaping*] **landscape contracting** business's license for a
 33 fifth offense.

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

36 **SECTION 41.** ORS 701.005 is amended to read:

37 701.005. As used in this chapter:

- 38 (1) "Board" means the Construction Contractors Board.
- 39 (2) "Construction debt" means an amount owed under:
 - 40 (a) A final order or arbitration award issued by the board; or
 - 41 (b) A judgment or civil penalty arising from construction activities within the United States.
- 42 (3) "Contractor" means a person who, for compensation or with the intent to sell, arranges or
 43 undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from,
 44 improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, exca-
 45 vation or other structure, project, development or improvement attached to real estate or to do any

1 part thereof. "Contractor" includes general contractors, residential-only contractors and specialty
2 contractors as defined in this section.

3 (4) "General contractor" means a contractor whose business operations require the use of more
4 than two unrelated building trades or crafts that the contractor supervises or performs in whole or
5 part, whenever the sum of all contracts on any single property, including materials and labor, ex-
6 ceeds an amount established by rule by the board. "General contractor" does not include specialty
7 contractors or limited contractors, as described in ORS 701.085.

8 (5) "Home inspector" means a person who, for a fee, inspects and provides written reports on
9 the overall physical condition of a residential structure and the appurtenances thereto. "Home in-
10 spector" does not include persons certified under ORS chapter 455 to inspect new, repaired or al-
11 tered structures for compliance with the state building code.

12 (6) "Inspector" means a contractor registered with the board who inspects or otherwise provides
13 services to a property owner or other contractor but does not substantively add to or subtract from
14 a structure. "Inspector" includes but is not limited to a home inspector certified under ORS 701.350,
15 a lead-based paint inspector licensed under ORS 701.515 and a cross connection inspector and
16 backflow assembly tester certified under ORS 448.279. "Inspector" does not include city or county
17 inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

18 (7) "Large commercial structure" means a structure that is not a residential structure or small
19 commercial structure.

20 (8) "Licensed developer" means a contractor who owns property or an interest in property and
21 arranges for construction work, if the contractor:

22 (a) Engages in the business of arranging for construction work and performing other activities
23 associated with the improvement of real property, with the intent to sell the property;

24 (b) Acts in association with one or more licensed general contractors and the general contractor
25 or combination of general contractors have sole responsibility for overseeing all phases of con-
26 struction activity on the property; and

27 (c) Does not perform any construction work on the property.

28 (9) "Officer" means any of the following persons:

29 (a) A president, vice president, secretary, treasurer or director of a corporation.

30 (b) A general partner in a limited partnership.

31 (c) A manager in a manager-managed limited liability company.

32 (d) A member of a member-managed limited liability company.

33 (e) A trustee.

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

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

40 (a) A person who purchases or owns property and constructs or for compensation arranges for
41 the construction of one or more residential structures or small commercial structures with the in-
42 tent of selling the structures;

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

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

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

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

12 (12) "Small commercial structure" means a nonresidential structure that has a ground area of
 13 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the
 14 top surface of the lowest flooring to the highest interior overhead finish of the structure.

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

19 **SECTION 42.** ORS 701.010 is amended to read:

20 701.010. The Construction Contractors Board may adopt rules to make licensure optional for
 21 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
 22 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

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

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

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

28 (4) A person working on one structure or project, under one or more contracts, when the ag-
 29 gregate price of all of that person's contracts for labor, materials and all other items is less than
 30 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
 31 to a person who advertises or puts out any sign or card or other device that might indicate to the
 32 public that the person is a contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 **SECTION 43.** ORS 701.013 is amended to read:

37 701.013. It is the intent of the Legislative Assembly to reduce the number of city business li-
 38 censes that construction contractors [*and landscape contractors*] are required to obtain in order to
 39 conduct business in the Portland metropolitan area. It is the purpose of this section and ORS 701.015
 40 to enable construction contractors [*and landscape contractors*] to secure from the metropolitan ser-
 41 vice district one business license that will permit the conduct of business by [*such*] **construction**
 42 contractors in cities in which the contractors perform a limited amount of work and in which they
 43 do not have a principal place of business. Furthermore, it is also the intent of the Legislative As-
 44 sembly that this section and ORS 701.015 apply only to **construction** contractors engaged in the
 45 building trades and crafts [*and to landscape contractors*] without regard to any subsequent expansion

1 of the jurisdiction of the Construction Contractors Board [*or State Landscape Contractors Board*]
 2 over other trades and crafts. It is declared to be the policy of this state that, to the maximum ex-
 3 tent possible consistent with the requirements of this section and ORS 701.015, the cities within the
 4 boundaries of the metropolitan service district be allowed to control the imposition of business li-
 5 cense taxes and to maintain the level of revenues obtained from those taxes. The amount and trends
 6 of revenue produced or distributed to each city is intended to reflect the construction business ac-
 7 tivity within the participating cities.

8 **SECTION 44.** ORS 701.015 is amended to read:

9 701.015. (1) A contractor [*or landscape contractor*] shall pay directly to any city within the
 10 boundaries of a metropolitan service district any business license tax imposed by the city when:

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

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

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

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

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

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

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

42 (5) The metropolitan service district shall distribute the business license fees collected by the
 43 district under this section, less administrative expenses, to the cities that are located wholly or
 44 partly within the district and that collect a business license tax. In any year, each such city shall
 45 receive such share of the license fees as the number of residential building permits that it issued

1 during that year bears to the total number of residential building permits that were issued during
 2 that year by all of the cities located wholly or partly within the district. Distribution of moneys
 3 under this subsection shall be made at least once in each year. The metropolitan service district
 4 shall determine the number of residential building permits issued by cities within the district from
 5 statistics and other data published by the State Housing Council.

6 (6) As used in this section:

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

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

14 [(c) "*Landscape contractor*" means a person or business who is licensed under ORS 671.510 to
 15 671.710 as a landscape contractor.]

16 [(d)] (c) "Principal place of business" means the location in this state of the central adminis-
 17 trative office of a person conducting business in this state.

18 **SECTION 45. Sections 46 to 48 of this 2007 Act are added to and made a part of ORS**
 19 **671.510 to 671.710.**

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

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

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

40 (b) "Conducting business" means engaging directly, or through officers, agents and em-
 41 ployees, in an activity in pursuit of gain.

42 (c) "Principal place of business" means the location in this state of the central adminis-
 43 trative office of a person conducting business in this state.

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

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

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

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

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

11 (4) The metropolitan service district shall issue a business license to a landscape con-
 12 tracting business if:

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

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

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

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

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

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

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

42 **SECTION 49.** Sections 46 to 48 of this 2007 Act and the amendments to ORS 215.213,
 43 215.283, 447.060, 448.279, 479.940, 571.045, 571.057, 571.250, 656.027, 671.321, 671.520, 671.525,
 44 671.530, 671.540, 671.555, 671.560, 671.565, 671.568, 671.570, 671.574, 671.575, 671.580, 671.590,
 45 671.600, 671.603, 671.605, 671.607, 671.610, 671.613, 671.614, 671.615, 671.625, 671.650, 671.660,

1 **671.690, 671.700, 671.703, 671.707, 671.710, 671.997, 701.005, 701.010, 701.013 and 701.015 by**
2 **sections 1 to 44 of this 2007 Act do not limit or terminate any right, duty, obligation or dis-**
3 **ability acquired or incurred before the effective date of this 2007 Act under ORS 215.213,**
4 **215.283, 447.060, 448.279, 479.940, 571.045, 571.057, 571.250, 656.027, 671.321, 671.520, 671.525,**
5 **671.530, 671.540, 671.555, 671.560, 671.565, 671.568, 671.570, 671.574, 671.575, 671.580, 671.590,**
6 **671.600, 671.603, 671.605, 671.607, 671.610, 671.613, 671.614, 671.615, 671.625, 671.650, 671.660,**
7 **671.690, 671.700, 671.703, 671.707, 671.710, 671.997, 701.005, 701.010, 701.013 and 701.015 as set**
8 **forth in the 2005 Edition of Oregon Revised Statutes.**

9