

HOUSE AMENDMENTS TO HOUSE BILL 2656

By COMMITTEE ON CONSUMER PROTECTION

May 3

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and line 3 and insert
2 “671.520, 671.525, 671.690, 671.703, 701.005, 701.010, 701.055, 701.135 and 701.235;”.

3 Delete lines 6 through 25 and delete pages 2 through 16 and insert:

4 **“SECTION 1. Sections 2 to 9 of this 2007 Act are added to and made a part of ORS**
5 **chapter 701.**

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

7 **“(a) ‘Appropriate building envelope specialist’ means a building envelope specialist who**
8 **has received education and training from a building envelope specialist training provider in**
9 **the type of building envelope work for which the specialist is designated under subsection (3)**
10 **of this section and who possesses a current certificate of completion from the training pro-**
11 **vider for that type of work.**

12 **“(b) ‘Manufactured dwelling’ has the meaning given that term in ORS 446.003.**

13 **“(2) A contractor may not perform building envelope work on a structure unless the**
14 **contractor employs or otherwise obtains the services of at least one appropriate building**
15 **envelope specialist.**

16 **“(3) A contractor shall designate at least one appropriate building envelope specialist for**
17 **each type of building envelope work the contractor is performing on the structure. A desig-**
18 **nated building envelope specialist shall substantially observe the building envelope work for**
19 **which the specialist is designated.**

20 **“(4) A designated building envelope specialist shall review each type of building envelope**
21 **work performed on the structure by the contractor for the purpose of completing a quality**
22 **assurance checklist.**

23 **“(5) The contractor shall provide the jurisdiction that administers and enforces the**
24 **building inspection program for the structure with a completed quality assurance checklist**
25 **for the building envelope work performed on the structure by the contractor. For each type**
26 **of building envelope work performed on the structure by the contractor, the quality assur-**
27 **ance checklist must provide the name and signature of an appropriate building envelope**
28 **specialist designated by the contractor to review the work.**

29 **“(6) For purposes of this section, the physical attachment of a deck to a structure that**
30 **is subject to the state building code is building envelope work.**

31 **“(7) This section does not apply to:**

32 **“(a) The manufacturing of a manufactured dwelling; or**

33 **“(b) The performance of building envelope work by or on behalf of the manufacturer**
34 **during installation of a manufactured dwelling or during or after the siting of a manufac-**
35 **tured dwelling.**

1 **“SECTION 3. (1) The Construction Contractors Board shall adopt rules that:**

2 **“(a) Identify work that is within the scope of the exterior finish, the roofing and the**
3 **siding, window and door types of building envelope specialist work;**

4 **“(b) Subject to section 6 of this 2007 Act, establish education, training and continuing**
5 **education standards for persons performing each type of building envelope specialist work;**

6 **“(c) Establish criteria and processes for the approval of building envelope specialist**
7 **training providers;**

8 **“(d) Establish a standardized form, format and content for certificates of completion is-**
9 **sued by approved building envelope specialist training providers;**

10 **“(e) Establish the form and content of a quality assurance checklist for use as provided**
11 **under section 2 of this 2007 Act;**

12 **“(f) Set fees for any building envelope specialist training program offered by the board;**

13 **“(g) Require a building envelope specialist designated as described in section 2 of this 2007**
14 **Act to carry evidence of a current and appropriate certificate of completion;**

15 **“(h) Regulate the training-related business practices and activities of building envelope**
16 **specialist training providers; and**

17 **“(i) Set fees as necessary to defray the costs of administering and enforcing this section**
18 **and section 2 of this 2007 Act.**

19 **“(2) The board may adopt rules to require approved building envelope specialist training**
20 **providers to provide the board with information the board deems useful regarding persons**
21 **who successfully complete building envelope specialist training offered by the provider.**

22 **“SECTION 4. The Construction Contractors Board shall appoint an advisory committee**
23 **to assist the board in developing rules under section 3 of this 2007 Act. The advisory com-**
24 **mittee members shall include, but need not be limited to:**

25 **“(1) A member of the board;**

26 **“(2) A person representing the Department of Consumer and Business Services;**

27 **“(3) A person representing residential construction contractors;**

28 **“(4) A person representing commercial construction contractors;**

29 **“(5) A person representing residential remodeling contractors;**

30 **“(6) A person representing subcontractors;**

31 **“(7) A person with experience in training programs for the building trades;**

32 **“(8) A person representing a municipality administering a building inspection program**
33 **under ORS 455.148 or 455.150; and**

34 **“(9) A person who provides training as part of a building trade course of study prescribed**
35 **under ORS 660.157.**

36 **“SECTION 5. Section 4 of this 2007 Act is repealed January 2, 2010.**

37 **“SECTION 6. (1) A contractor may not employ or contract for a person to perform work**
38 **as a building envelope specialist unless the person has successfully completed the building**
39 **envelope specialist training required by the Construction Contractors Board for that type of**
40 **building envelope specialist work and possesses a current certificate of completion.**

41 **“(2) To qualify as a building envelope specialist for exterior finish work, a person must**
42 **complete training approved by the board and receive a certificate of completion regarding the**
43 **installation, alteration and repair of lath, plaster, stucco, cement, brick, masonry, exterior**
44 **insulation finish systems and other exterior building envelope materials regulated under the**
45 **state building code.**

1 “(3) To qualify as a building envelope specialist for roofing work, a person must complete
2 training approved by the board and receive a certificate of completion regarding the instal-
3 lation, alteration and repair of asphalt, pitch, tar, felt, flax, shakes, shingles, aluminum, tile,
4 slate, urethane and other roofing building envelope materials regulated under the state
5 building code.

6 “(4) To qualify as a building envelope specialist for siding, window and door work, a per-
7 son must complete training approved by the board and receive a certificate of completion
8 regarding the installation, alteration and repair of siding materials such as wood, aluminum,
9 enameled steel, fiber-reinforced cement, plastic and glass and of decks, window assemblies
10 and frames, door assemblies and frames, sashes, hardware, glass, glass products,
11 weatherstripping, caulking and other siding, window and door building envelope materials
12 regulated under the state building code.

13 “(5) The board may adopt rules that modify the categories of materials for a type of
14 building envelope specialist training to reflect the development of new or innovative materi-
15 als and construction methods.

16 “SECTION 7. The Construction Contractors Board, the Department of Consumer and
17 Business Services or a building inspector for a municipality administering and enforcing a
18 building inspection program under ORS 455.148 or 455.150 may require a person who is en-
19 gaged in work as a designated building envelope specialist to show proof that the person
20 holds a current and appropriate certificate of completion for the type of work being per-
21 formed by the person.

22 “SECTION 8. (1) The Construction Contractors Board shall adopt rules establishing a
23 continuing education system for all persons licensed by the board. The rules adopted by the
24 board shall include, but need not be limited to, rules establishing the required number of
25 hours and course content for continuing education. The board may establish reasonable fees
26 for courses and instruction provided by the board, or for approving the course content and
27 instruction for continuing education provided by other sources.

28 “(2) The continuing education required for a contractor may include training in con-
29 struction means and methods, compliance with the state building code and business prac-
30 tices.

31 “(3) A person may not renew a license issued by the board unless the person certifies to
32 the board at the time of license renewal that the licensee has completed the amount and type
33 of continuing education required by the board.

34 “(4) Subsections (1) to (3) of this section do not apply to a licensed developer.

35 “SECTION 9. (1) The Construction Contractors Board shall adopt rules establishing the
36 date by which a licensee must first complete continuing education under section 8 of this
37 2007 Act for persons that:

38 “(a) Are licensed by the board prior to the effective date of this 2007 Act; and

39 “(b) Do not complete training described in ORS 701.072 prior to January 1, 2010.

40 “(2) The date established by the board under subsection (1) of this section may not be
41 earlier than January 1, 2010, or later than January 1, 2014.

42 “SECTION 10. Section 11 of this 2007 Act is added to and made a part of ORS 671.510 to
43 671.710.

44 “SECTION 11. (1) Notwithstanding ORS 701.055 and section 2 of this 2007 Act, a land-
45 scaping business licensed by the State Landscape Contractors Board may physically attach

1 a deck to a structure without obtaining a license under ORS chapter 701 as a construction
2 contractor if:

3 “(a) Prior to undertaking the deck work, the landscaping business has:

4 “(A) Notified the board that the landscaping business is engaged in work involving the
5 physical attachment of decks to structures;

6 “(B) Provided the board with proof that the landscaping business has obtained a surety
7 bond covering the deck work in the amount of \$10,000 and obtained public liability, personal
8 injury and property damage insurance covering the deck work in an amount not less than
9 \$300,000; and

10 “(C) Obtained identification as described in subsection (3) of this section;

11 “(b) When performing the deck work, the landscaping business designates at least one
12 appropriate building envelope specialist as defined in section 2 of this 2007 Act to substan-
13 tially observe the attachment of the deck to the structure and to complete a building envel-
14 ope quality assurance checklist for the work as provided in section 2 of this 2007 Act; and

15 “(c) The landscaping business provides the jurisdiction that administers and enforces the
16 building inspection program for the structure with a completed quality assurance checklist
17 for the attachment of the deck to the structure that includes the name and signature of an
18 appropriate building envelope specialist designated by the landscaping business to review the
19 work.

20 “(2) The bond and insurance described in subsection (1) of this section are in addition to
21 the bond required under ORS 671.690 or the insurance required under ORS 671.565 and shall
22 be specific to the deck work of the landscaping business. The bond required by this section
23 must be continuously on file with the board in the amount required by this section and is for
24 the exclusive purpose of payment of final orders and arbitration awards of the board for
25 claims involving deck work. Upon termination or cancellation of the bond, withdrawal of the
26 deposit or reduction of the bond to less than the required amount, the licensee shall imme-
27 diately file a replacement bond.

28 “(3) If a landscaping business complies with subsection (1)(a)(A) and (B) of this section,
29 the board shall issue identification to the landscaping business indicating that the landscap-
30 ing business has complied with subsection (1)(a)(A) and (B) of this section. The identification
31 may be in any form determined by the board and shall expire at the time the landscaping
32 business license expires unless, at the time of application for renewal of the landscaping
33 business license, the business renews the identification by providing evidence satisfactory to
34 the board that the landscaping business has a bond and insurance in effect as required by
35 this section. The board may impose a fee for the issuance or renewal of the identification.

36 “**SECTION 12.** ORS 671.520 is amended to read:

37 “671.520. As used in ORS 671.510 to 671.710, unless the context requires otherwise:

38 “(1) ‘Landscape contractor’ means any person who for compensation or with the intent to be
39 compensated performs or supervises activities requiring the art, ability, experience, knowledge, sci-
40 ence and skill to:

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

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

43 “(c) Construct or repair ornamental water features, drainage systems or irrigation systems; [or]

44 “(d) Plan or install fences, decks **that are not subject to section 2 of this 2007 Act**, arbors,
45 patios, landscape edging, driveways, walkways or retaining walls[.]; or

1 “(e) **Plan or install decks under authority of section 11 of this 2007 Act.**

2 “(2) ‘Landscaping business’ means a business that for compensation or with the intent to be
3 compensated arranges for or submits a bid or otherwise offers or contracts to provide the services
4 of a landscape contractor.

5 “(3) ‘Licensee’ means a person that is licensed under ORS 671.510 to 671.710 as a landscape
6 contractor or landscaping business.

7 “(4) ‘Nursery stock’ means nursery stock:

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

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

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

13 “**SECTION 13.** ORS 671.525 is amended to read:

14 “671.525. (1) An applicant for a landscaping business license must qualify as an independent
15 contractor, under ORS 670.600, to be licensed with the State Landscape Contractors Board.

16 “(2) The board shall establish two classes of independent contractor registration:

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

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

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

24 “(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
25 limited liability companies that do not qualify as nonexempt. All partnerships, corporations and
26 limited liability companies must have a federal tax identification number.

27 “(3) If a licensee who qualifies for registration under subsection (2)(b) of this section hires one
28 or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section,
29 the licensee is subject to penalties under ORS 671.997 and must reapply to the board for registration
30 in the correct class.

31 “(4) The decision of the board that a licensee is an independent contractor applies only when
32 the licensee is performing work of the nature described in ORS 671.520 and 671.530 **or section 11**
33 **of this 2007 Act.**

34 “**SECTION 14.** ORS 671.690 is amended to read:

35 “671.690. (1) An applicant for a license as a landscaping business shall file with the State
36 Landscape Contractors Board a surety bond with one or more corporate sureties authorized to do
37 business in this state, or an irrevocable letter of credit issued by an insured institution, as defined
38 in ORS 706.008. The amount of the bond or letter of credit shall be:

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

41 “(b) \$10,000 for an applicant who, not in conjunction with the performance of landscaping work,
42 constructs fences, decks **that are not subject to section 2 of this 2007 Act**, arbors, patios, land-
43 scape edging, driveways, walkways or retaining walls, unless the applicant is made subject to para-
44 graph (d) of this subsection by work on other jobs performed by the applicant.

45 “(c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a land-

1 scape job.

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

3 “(2) The bond or letter of credit required under subsection (1) of this section shall be condi-
4 tioned that the applicant pays:

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

6 “(b) All persons furnishing labor or material, or renting or supplying equipment to the business;

7 “(c) All amounts that may be adjudged against the business by reason of negligent or improper
8 work or breach of contract in performing any work subject to ORS 671.510 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,
12 the landscaping business may file with the board, under the same terms and conditions as when a
13 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 business.

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

24 “(6) The landscaping business is responsible for all work that is subject to ORS 671.510 to
25 671.710.

26 “**SECTION 15.** ORS 671.703 is amended to read:

27 “671.703. (1) If a person has a claim against a licensed landscaping business for negligent or
28 improper work performed by the landscaping business, or for alleged breach of contract by the
29 landscaping business, the person may file the claim with the State Landscape Contractors Board.

30 “(2) Upon receipt of a claim that qualifies under subsection (1) of this section, the board shall
31 initiate an investigation. Upon completion of the investigation, if the board determines that facts
32 exist supporting an order for payment, the board may order the landscaping business to pay the
33 claim. A party to the claim may request a hearing on the order issued by the board.

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

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

40 “(5) Except as provided in this subsection, rules adopted by the board to regulate arbitration
41 under subsections (3) and (4) of this section must substantially conform with the provisions of ORS
42 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.
43 The rules may:

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

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

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

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

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

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

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

15 “(b) If the party files a complaint in a court, the party must, within the time specified in para-
16 graph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled
17 by the board rule to receive a copy of the complaint. If the party filing the complaint is the claim-
18 ant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed
19 by the licensed landscaping business against whom a claim is alleged, the complaint may be a com-
20 plaint for damages, a complaint for declaratory judgment or other complaint that allows the claim-
21 ant to file a response alleging the elements of the claim. The claimant has the burden of proving the
22 elements of the claim in any action described in this paragraph.

23 “(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
24 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
25 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
26 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
27 tration.

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

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

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

35 “(7) An arbitration conducted under subsection (3) or (4) of this section must be held before an
36 administrative law judge acting as arbitrator. The administrative law judge assigned to act as
37 arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings
38 established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator
39 is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to
40 ORS 183.645.

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

45 “(9) If the claim is submitted for determination by a court, the board may require that the

1 claimant provide status reports on the pending action. The board may dismiss or close a claim filed
2 under subsection (1) of this section as established by rule of the board if the claimant fails to submit
3 status reports on a pending action.

4 “(10) The board shall issue a final order or arbitration award in a form that indicates the max-
5 imum amount payable from the deposit, bond or letter of credit. If the landscaping business does not
6 pay the claim on or before the 30th day after receiving the board order or award, the board shall
7 order the claim paid out of the deposit, bond or letter of credit filed under ORS 671.690 **or, if the**
8 **claim is for deck work authorized under section 11 of this 2007 Act, paid out of the bond re-**
9 **quired under section 11 of this 2007 Act.**

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

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

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

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

21 “**SECTION 16.** ORS 701.005 is amended to read:

22 “701.005. As used in this chapter:

23 “(1) ‘Board’ means the Construction Contractors Board.

24 “(2) **‘Building envelope’ means the integrated assemblies, components and materials of a**
25 **structure that separate the interior space of the structure from the exterior.**

26 “(3) **‘Building envelope specialist’ means a person who has successfully completed ap-**
27 **proved training in one or more types of building envelope work described in section 6 (2), (3)**
28 **or (4) of this 2007 Act and possesses a current certificate of completion.**

29 “(4) **‘Building envelope specialist training provider’ means a post-secondary institution,**
30 **trade school, trade association, professional society or other entity approved by the board**
31 **to provide building envelope specialist education, training or continuing education.**

32 “(5) **‘Building envelope work’ means the construction, reconstruction, alteration or repair**
33 **of the building envelope of a structure regulated under the state building code.**

34 “(6) **‘Certificate of completion’ means a document issued by a building envelope specialist**
35 **training provider to affirm that a person has completed approved training in a type of**
36 **building envelope specialist work.**

37 “[2] (7) ‘Construction debt’ means an amount owed under:

38 “(a) A final order or arbitration award issued by the board; or

39 “(b) A judgment or civil penalty arising from construction activities within the United States.

40 “[3] (8) ‘Contractor’ means a person who, for compensation or with the intent to sell, arranges
41 or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract
42 from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad,
43 excavation or other structure, project, development or improvement attached to real estate or to
44 do any part thereof. ‘Contractor’ includes general contractors, residential-only contractors and spe-
45 cialty contractors as defined in this section.

1 “[(4)] (9) ‘General contractor’ means a contractor whose business operations require the use of
2 more than two unrelated building trades or crafts that the contractor supervises or performs in
3 whole or part, whenever the sum of all contracts on any single property, including materials and
4 labor, exceeds an amount established by rule by the board. ‘General contractor’ does not include
5 specialty contractors or limited contractors, as described in ORS 701.085.

6 “[(5)] (10) ‘Home inspector’ means a person who, for a fee, inspects and provides written reports
7 on the overall physical condition of a residential structure and the appurtenances thereto. ‘Home
8 inspector’ does not include persons certified under ORS chapter 455 to inspect new, repaired or al-
9 tered structures for compliance with the state building code.

10 “[(6)] (11) ‘Inspector’ means a contractor registered with the board who inspects or otherwise
11 provides services to a property owner or other contractor but does not substantively add to or
12 subtract from a structure. ‘Inspector’ includes but is not limited to a home inspector certified under
13 ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection in-
14 spector and backflow assembly tester certified under ORS 448.279. ‘Inspector’ does not include city
15 or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

16 “[(7)] (12) ‘Large commercial structure’ means a structure that is not a residential structure or
17 small commercial structure.

18 “[(8)] (13) ‘Licensed developer’ means a contractor who owns property or an interest in property
19 and arranges for construction work, if the contractor:

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

22 “(b) Acts in association with one or more licensed general contractors and the general con-
23 tractor or combination of general contractors have sole responsibility for overseeing all phases of
24 construction activity on the property; and

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

26 “[(9)] (14) ‘Officer’ means any of the following persons:

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

28 “(b) A general partner in a limited partnership.

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

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

31 “(e) A trustee.

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

35 “[(10)] (15) ‘Residential-only contractor’ means a general contractor or specialty contractor who
36 performs work exclusively in connection with residential structures and small commercial struc-
37 tures, and the appurtenances thereto. ‘Residential-only contractor’ includes, but is not limited to:

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

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

44 “(c) A community college district, as defined in ORS 341.005, that permits students to construct
45 a residential structure or small commercial structure as an educational experience to learn building

1 techniques and sells the completed structure; or

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

5 “[*(11)*] **(16)** ‘Residential structure’ means a residence, including a site-built home, modular home
6 constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured
7 dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part
8 of a multistructure complex of buildings.

9 “[*(12)*] **(17)** ‘Small commercial structure’ means a nonresidential structure that has a ground
10 area of 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from
11 the top surface of the lowest flooring to the highest interior overhead finish of the structure.

12 “[*(13)*] **(18)** ‘Specialty contractor’ means a contractor who performs work on a structure, project,
13 development or improvement and whose operations as such do not fall within the definition of
14 ‘general contractor.’ ‘Specialty contractor’ includes a person who performs work regulated under
15 ORS chapter 446.

16 “**SECTION 17.** ORS 701.010 is amended to read:

17 “701.010. The Construction Contractors Board may adopt rules to make licensure optional for
18 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
19 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

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

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

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

25 “(4) A person working on one structure or project, under one or more contracts, when the ag-
26 gregate price of all of that person’s contracts for labor, materials and all other items is less than
27 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
28 to a person who advertises or puts out any sign or card or other device that might indicate to the
29 public that the person is a contractor.

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

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

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

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

1 “(b) A registered professional engineer licensed by the State Board of Examiners for Engineer-
2 ing and Land Surveying.

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

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

5 “(e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks
6 **that are not subject to section 2 of this 2007 Act**, arbors, patios, landscape edging, driveways,
7 walkways or retaining walls and that meets the applicable bonding requirements under ORS 671.690.

8 **“(f) A landscaping business licensed under ORS 671.510 to 671.710 that constructs decks**
9 **and that complies with section 11 of this 2007 Act.**

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

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

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

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

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

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

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

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

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

29 “(13) Units of government other than those specified in ORS 701.005 [*(10)(b) and (c)*] **(15)(b) and**
30 **(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 18.** ORS 701.055 is amended to read:

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

44 “(2) A licensed partnership or corporation shall notify the board immediately upon any change
45 in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the

1 partnership may not conduct activities that require a license under this chapter.

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

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

17 “ _____

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

21 (b) I own, reside in or will reside in the completed dwelling. My general contractor is
22 _____, Construction Contractors Board license no. _____, license expiration date
23 _____. I will instruct my general contractor that all subcontractors who work on this
24 dwelling must be licensed with the Construction Contractors Board **and that any building envelope**
25 **work by the contractor requires the designation of an appropriate building envelope**
26 **specialist**; or

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

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

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

34 “ _____

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

41 “(a) Compliance with state and federal laws regarding Social Security tax, income tax and un-
42 employment tax.

43 “(b) Workers’ compensation insurance on workers.

44 “(c) Liability and property damage insurance.

45 “(6) The board shall develop and furnish to city, county and state building permit offices, at no

1 cost to the offices, the Information Notice to Property Owners About Construction Responsibilities
2 and the statement to be signed by the permit applicant.

3 “(7) A city or county that requires a business license for engaging in a business subject to
4 regulation under this chapter shall require that the licensee or applicant for issuance or renewal
5 of the business license file, or have on file, with the city or county, a signed statement that the
6 licensee or applicant is licensed under this chapter.

7 “(8) It is prima facie evidence of doing business as a contractor if a person for that person’s own
8 use performs, employs others to perform, or for compensation and with the intent to sell the struc-
9 ture, arranges to have performed any work described in ORS 701.005 [(3)] (8) if within any 36-month
10 period that person offers for sale two or more newly built structures on which that work was per-
11 formed.

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

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

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

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

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

23 “(11)(a) A contractor shall maintain a list that includes the following information about all
24 subcontractors or other contractors performing work on a project for that contractor:

25 “(A) Names and addresses.

26 “(B) License numbers.

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

29 “(12) A contractor may not hire any subcontractor or other contractor to perform work unless
30 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
31 701.010.

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

41 “(14) A contractor may not perform work subject to this section for an owner of a residential
42 structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of
43 a contract was initially less than \$2,000, but during the course of performance the contract exceeds
44 that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later
45 than five days after the contractor knows or should reasonably know that the contract price will

1 exceed \$2,000. Failure to have a written contract will not void the contract.

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

4 “**SECTION 19.** ORS 701.135 is amended to read:

5 “701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
6 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
7 determines after notice and opportunity for hearing:

8 “(a) That the licensee or applicant has violated ORS 701.055 or 701.078.

9 “(b) That the licensee has violated a rule or order of the board.

10 “(c) That the licensee has knowingly assisted an unlicensed person to act in violation of this
11 chapter.

12 “(d) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because
13 the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person
14 claiming the lien.

15 “(e) That the licensee has knowingly provided false information to the board.

16 “(f) That the licensee has worked without a construction permit where a permit is required and
17 the work resulted in a claim being filed with the board. For purposes of this paragraph, ‘con-
18 struction permit’ includes a building permit, electrical permit, mechanical permit or plumbing per-
19 mit.

20 “(g) That the number of licensed contractors working together on the same task on the same job
21 site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the fol-
22 lowing:

23 “(A) Two sole proprietors;

24 “(B) One partnership;

25 “(C) One corporation; or

26 “(D) One limited liability company.

27 “(h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been
28 convicted of one of the following crimes:

29 “(A) Murder;

30 “(B) Assault in the first degree;

31 “(C) Kidnapping;

32 “(D) Rape, sodomy or unlawful sexual penetration;

33 “(E) Sexual abuse;

34 “(F) Arson in the first degree;

35 “(G) Robbery in the first degree;

36 “(H) Theft in the first degree; or

37 “(I) Theft by extortion.

38 “(i) That the licensee or applicant has not, within 90 days after the date when payment was
39 received from the public contracting agency, or contractor in the case of a subcontractor, made
40 payment to any person for supplying labor or materials contracted for with a public contract for a
41 public improvement plus the amount of interest due.

42 “(j) That the licensee or applicant has repeatedly reported bad faith or false claims of nonpay-
43 ment against contractors or subcontractors.

44 “(k) That the licensee or applicant has engaged in conduct as a contractor that is dishonest or
45 fraudulent and that the board finds injurious to the welfare of the public.

1 **“(L) That the licensee has designated a person who lacked a current and appropriate**
2 **certificate of completion as a building envelope specialist to substantially observe building**
3 **envelope work or to complete a building envelope quality assurance checklist.**

4 “(2)(a) The administrator of the board, in accordance with administrative rules adopted by the
5 board and after setting forth specific reasons for the findings, may suspend or refuse to renew a li-
6 cense without hearing in any case where the administrator finds a serious danger to the public
7 welfare, including but not limited to:

8 “(A) Lack of a surety bond required by ORS 701.085;

9 “(B) Lack of liability insurance required by ORS 701.105;

10 “(C) Hiring employees while licensed as exempt under ORS 701.035; or

11 “(D) Conduct as a construction contractor that is dishonest or fraudulent.

12 “(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the
13 licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the
14 licensee or applicant as soon as practicable after the demand, and the administrator shall issue an
15 order pursuant to the hearing as required by ORS chapter 183 confirming, altering or revoking the
16 administrator’s earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the
17 order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation
18 that is subject to judicial determination in any court of this state, and the order by its terms will
19 terminate in case of final judgment in favor of the licensee or applicant.

20 **“(3)(a) The board may withdraw approval of a building envelope specialist training pro-**
21 **vider or may assess a civil penalty against a provider that violates a rule established by the**
22 **board under section 3 of this 2007 Act or that:**

23 **“(A) Has knowingly provided false information to the board;**

24 **“(B) Has provided verification of building envelope specialist training for a person who**
25 **did not complete training required by the board for a type of building envelope work; or**

26 **“(C) Has engaged in conduct that the board finds to be dishonest or fraudulent and to**
27 **constitute a serious danger to the public health and welfare.**

28 **“(b) The board may assess a civil penalty against a building envelope specialist who per-**
29 **forms building envelope specialist work of a type for which the person does not have training**
30 **and a current and appropriate certificate of completion.**

31 **“(c) The board may assess a civil penalty against any person who falsely represents that**
32 **the person is a building envelope specialist or an approved building envelope specialist**
33 **training provider.**

34 **“(4)(a) In addition to all other remedies, if the board has reason to believe that a person**
35 **is engaging in a violation of a provision of this chapter, the board may issue an order di-**
36 **recting the person to cease committing the violation. The issuance of a board order under**
37 **this paragraph is subject to ORS 183.413 to 183.497.**

38 “[(3)] (b) In addition to all other remedies, if it appears to the board that a person has engaged
39 in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter,
40 the board may direct the Attorney General or the district attorney of the county in which the act,
41 practice or transaction occurs, to apply to the court for an injunction restraining the person from
42 violating the provisions of this chapter. An injunction may not issue for failure to maintain the list
43 provided for in ORS 701.055 (11) unless the court determines that the failure is intentional.

44 “[(4)] (5) A certified copy of the record of conviction shall be conclusive evidence of a conviction
45 under subsection (1)(h) of this section.

1 “[5] (6) If the board suspends or revokes the license of an individual contractor or contractor
2 business for a violation of subsection (1)(g) of this section, the board may not restore or reissue the
3 license unless the individual contractor or a responsible managing individual, as defined in ORS
4 701.078, for the contractor business has successfully completed the training and testing described in
5 ORS 701.072.

6 “**SECTION 20.** ORS 701.235 is amended to read:

7 “701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions
8 of this chapter including, but not limited to, rules that:

9 “(a) Establish language for surety bonds;

10 “(b) Establish processing requirements for different types of claims described in this chapter;

11 “(c) Limit whether a claim may be processed by the board if there is no direct contractual re-
12 lationship between the claimant and the contractor;

13 “(d) Notwithstanding ORS 701.146 (7) and 701.150 (4) and subject to ORS 701.150 (6), exclude or
14 limit recovery from the contractor’s bond required by ORS 701.085, of damages awarded by a court
15 or arbitrator for interest, service charges, costs and attorney fees arising from filing and proving
16 the claim; and

17 “(e) Designate a form to be used by an owner of residential property under ORS 87.007 for the
18 purpose of indicating the method the owner has selected to comply with the requirements of ORS
19 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

20 “(2) The board may adopt rules prescribing terms and conditions under which a contractor may
21 substitute a letter of credit from a bank authorized to do business in this state instead of the bond
22 requirements prescribed in ORS 701.085.

23 “**(3) The board may adopt rules to administer and enforce sections 2, 6 and 7 of this 2007**
24 **Act.**

25 “**SECTION 21.** (1) **The amendments to ORS 671.520, 671.525, 671.690, 671.703, 701.005,**
26 **701.010, 701.055, 701.135 and 701.235 by sections 12 to 20 of this 2007 Act become operative**
27 **January 1, 2010.**

28 “**(2) Sections 2, 6, 7 and 11 of this 2007 Act apply to construction for which a permit is**
29 **issued on or after January 1, 2010.**

30 “**(3) The Construction Contractors Board shall adopt initial rules under section 3 of this**
31 **2007 Act in time for the rules to become effective no later than January 1, 2010.**

32 “**SECTION 22.** **This 2007 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
34 **on its passage.”.**