

A-Engrossed
House Bill 3242

Ordered by the House May 10
Including House Amendments dated May 10

Sponsored by Representative SCHAUFLEER; Representatives BRUUN, GILLIAM, HOLVEY, RILEY (at the request of Oregon-Columbia Chapter of Associated General Contractors, Oregon State Building and Construction Trades Council)

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.

Creates categories and levels of [*construction contractor licensing*] **endorsement for construction contractors**. Creates new experience, continuing education, bonding and insurance provisions for categories and levels of construction contractor. **Requires contractor to have current license with proper endorsement before undertaking or offering or bidding to undertake construction work. Prohibits contracting agency from excluding commercial contractor from competing for public contract based on license endorsement level. Requires commercial contractor to have key employees meeting experience requirements. Exempts city and county inspectors from construction contractor licensing requirement.**

Modifies claim and recovery provisions. Imposes workers' compensation insurance requirement on certain contractors otherwise qualifying as exempt.

Revises definitions of small commercial structure and residential structure. Requires general contractor for new large commercial structure to provide warranty of building envelope and penetration components. Changes required composition of Construction Contractors Board.

Makes bond, insurance and application procedure changes applicable to licenses issued or renewed on or after July 1, 2008. Makes claim resolution, satisfaction and lien recording changes applicable to claims against persons issued or renewing licenses on or after July 1, 2008. Makes endorsement requirement, key employee and workers compensation changes effective July 1, 2010. Makes Construction Contractors Board composition changes effective for appointments to terms beginning on or after July 1, 2009.

[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to construction contractors; creating new provisions; amending ORS 18.635, 18.800, 205.126,
3 279C.375, 279C.465, 279C.585, 479.940, 646.551, 656.021, 656.027, 671.540, 701.005, 701.010, 701.035,
4 701.055, 701.060, 701.065, 701.072, 701.075, 701.078, 701.085, 701.105, 701.115, 701.135, 701.138,
5 701.139, 701.140, 701.145, 701.146, 701.148, 701.150, 701.205, 701.230, 701.235, 701.990 and 701.992;
6 and repealing ORS 701.058 and 701.252.

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

8 **SECTION 1. Sections 2 to 12 of this 2007 Act are added to and made a part of ORS**
9 **chapter 701.**

10 **SECTION 2. (1) Except as provided in ORS 701.010, a person that undertakes, offers to**
11 **undertake or submits a bid to do work as a contractor must have a current license issued**
12 **by the Construction Contractors Board and possess an appropriate endorsement as provided**
13 **in this section.**

14 **(2) A person that undertakes, offers to undertake or submits a bid to do work as a con-**
15 **tractor in preparation for or in connection with a residential structure must have one of the**
16 **following endorsements:**

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

- 1 (a) Residential general contractor.
- 2 (b) Residential specialty contractor.
- 3 (c) Residential limited contractor.
- 4 (d) Residential developer.

5 (3) A person that undertakes, offers to undertake or submits a bid to do work as a con-
6 tractor in preparation for or in connection with a small commercial structure must have one
7 of the following endorsements:

- 8 (a) Residential general contractor.
- 9 (b) Residential specialty contractor.
- 10 (c) Residential limited contractor.
- 11 (d) Residential developer.
- 12 (e) Commercial general contractor level 1.
- 13 (f) Commercial specialty contractor level 1.
- 14 (g) Commercial general contractor level 2.
- 15 (h) Commercial specialty contractor level 2.
- 16 (i) Commercial developer.

17 (4) A person that undertakes, offers to undertake or submits a bid to do work as a con-
18 tractor in preparation for or in connection with a large commercial structure must have one
19 of the following endorsements:

- 20 (a) Commercial general contractor level 1.
- 21 (b) Commercial specialty contractor level 1.
- 22 (c) Commercial general contractor level 2.
- 23 (d) Commercial specialty contractor level 2.
- 24 (e) Commercial developer.

25 **SECTION 3.** (1) A residential general contractor shall:

- 26 (a) Obtain a surety bond under ORS 701.085 in the amount of \$15,000;
- 27 (b) Obtain general liability insurance under ORS 701.105 in an amount of not less than
28 \$500,000; and
- 29 (c) Have a responsible managing individual who meets the requirements of ORS 701.078.

30 (2) A residential specialty contractor shall:

- 31 (a) Obtain a surety bond under ORS 701.085 in the amount of \$10,000;
- 32 (b) Obtain general liability insurance under ORS 701.105 in an amount not less than
33 \$300,000; and
- 34 (c) Have a responsible managing individual who meets the requirements of ORS 701.078.

35 (3) A residential limited contractor shall:

- 36 (a) Obtain a surety bond under ORS 701.085 in the amount of \$5,000;
- 37 (b) Obtain general liability insurance under ORS 701.105 in an amount not less than
38 \$100,000; and
- 39 (c) Have a responsible managing individual who meets the requirements of ORS 701.078.

40 (4) A residential developer shall:

- 41 (a) Obtain a surety bond under ORS 701.085 in the amount of \$15,000; and
- 42 (b) Obtain general liability insurance under ORS 701.105 in an amount not less than
43 \$500,000.

44 **SECTION 4.** (1) A commercial general contractor level 1 shall:

- 45 (a) Obtain a surety bond under ORS 701.085 in the amount of \$75,000;

1 (b) Obtain general liability insurance under ORS 701.105 in an amount of not less than
2 \$2 million;

3 (c) Have a responsible managing individual who meets the requirements of ORS 701.078;
4 and

5 (d) Have one or more key employees with a combined total of at least eight years of ex-
6 perience described in section 8 of this 2007 Act.

7 (2) A commercial specialty contractor level 1 shall:

8 (a) Obtain a surety bond under ORS 701.085 in the amount of \$50,000;

9 (b) Obtain general liability insurance under ORS 701.105 in an amount not less than \$1
10 million;

11 (c) Have a responsible managing individual who meets the requirements of ORS 701.078;
12 and

13 (d) Have one or more key employees with a combined total of at least four years of ex-
14 perience described in section 8 of this 2007 Act.

15 (3) A commercial general contractor level 2 shall:

16 (a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000;

17 (b) Obtain general liability insurance under ORS 701.105 in an amount of not less than
18 \$1 million;

19 (c) Have a responsible managing individual who meets the requirements of ORS 701.078;
20 and

21 (d) Have one or more key employees with a combined total of at least eight years of ex-
22 perience described in section 8 of this 2007 Act.

23 (4) A commercial specialty contractor level 2 shall:

24 (a) Obtain a surety bond under ORS 701.085 in the amount of \$20,000;

25 (b) Obtain general liability insurance under ORS 701.105 in an amount not less than
26 \$500,000;

27 (c) Have a responsible managing individual who meets the requirements of ORS 701.078;
28 and

29 (d) Have one or more key employees with a combined total of at least four years of ex-
30 perience described in section 8 of this 2007 Act.

31 (5) A commercial developer shall:

32 (a) Obtain a surety bond under ORS 701.085 in the amount of \$15,000; and

33 (b) Obtain general liability insurance under ORS 701.105 in an amount not less than
34 \$500,000.

35 **SECTION 5.** A residential limited contractor may not:

36 (1) Perform work as a contractor exceeding \$40,000 in gross annual volume; or

37 (2) Enter into contracts to perform work as a contractor in excess of \$5,000.

38 **SECTION 6.** A licensed developer or a residential or commercial developer:

39 (1) Shall act only in association with licensed general contractors, one or a combination
40 of whom must have sole responsibility for overseeing all phases of construction activity on
41 a property; and

42 (2) May not perform any construction work on a property.

43 **SECTION 7.** Section 6 of this 2007 Act is amended to read:

44 **Sec. 6.** A [*licensed developer or a*] residential or commercial developer:

45 (1) Shall act only in association with licensed general contractors, one or a combination of

1 whom must have sole responsibility for overseeing all phases of construction activity on a property;
2 and

3 (2) May not perform any construction work on a property.

4 **SECTION 8. (1) A commercial general contractor or commercial specialty contractor**
5 **shall certify upon license application or renewal that the contractor has one or more key**
6 **employees with the combined total amount of experience required under section 4 of this 2007**
7 **Act.**

8 (2) Except as provided in subsection (3) of this section, the experience certified under
9 subsection (1) of this section must be as a licensed contractor, journeyman, foreperson or
10 supervisor or as any other employee engaged in construction work for a licensed contractor.

11 (3) The following experience or education may substitute for construction experience
12 described in subsection (2) of this section:

13 (a) Completion of an apprenticeship program may substitute for up to three years of ex-
14 perience;

15 (b) A bachelor's degree in a construction-related field may substitute for up to three
16 years of experience;

17 (c) A bachelor's degree or master's degree in business, finance or economics may sub-
18 stitute for up to two years of experience; and

19 (d) An associate's degree in construction or building management may substitute for up
20 to one year of experience.

21 **SECTION 9. (1) A commercial general contractor level 1 or commercial specialty con-**
22 **tractor level 1 shall have a key employee, or combination of key employees, who completes**
23 **at least 40 hours of continuing education per year.**

24 (2) A commercial general contractor level 2 or commercial specialty contractor level 2
25 shall have a key employee, or combination of key employees, who completes the equivalent
26 of at least 16 hours of continuing education per year.

27 (3) Notwithstanding subsection (1) of this section, if a commercial general contractor
28 level 1 or commercial specialty contractor level 1 has no more than four key employees, the
29 contractor shall have a key employee, or combination of key employees, that completes
30 continuing education each year equivalent to the number of key employees multiplied by
31 eight hours.

32 (4) Continuing education may be provided by post-secondary institutions, trade schools,
33 trade associations, professional societies, private companies, public agencies, business asso-
34 ciations and contractor-provided in-house training programs. Continuing education topics
35 may include, but need not be limited to, construction means, methods and business practices.

36 (5) A contractor applying for renewal shall certify the number of continuing education
37 hours completed during the preceding licensing period.

38 (6) A contractor subject to this section shall maintain records of the continuing educa-
39 tion completed by key employees.

40 (7) This section does not apply to a commercial contractor:

41 (a) That is subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS
42 chapter 693; or

43 (b) As provided by rule by the Construction Contractors Board.

44 **SECTION 10. (1) If an order of the Construction Contractors Board that determines a**
45 **claim under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid**

1 10 days after the date the order becomes final, the claimant may file the order with the
2 county clerk in any county of this state.

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

7 (3)(a) Payments from the surety bond of a residential contractor pursuant to board order
8 and notice are satisfied in the following priority in any 90-day period:

9 (A) Board orders as a result of claims against a residential contractor by the owner of
10 a residential or small commercial structure have payment priority to the full extent of the
11 bond over all other types of claims.

12 (B) If the claims described in subparagraph (A) of this paragraph do not exhaust the
13 bond, then amounts due as a result of all other types of residential or small commercial
14 structure claims filed within that 90-day period may be satisfied from the bond, except that
15 the total amount paid from any one bond to nonowner claimants may not exceed \$3,000.

16 (b) A 90-day period begins on the date the first claim is filed with the board. Subsequent
17 90-day periods begin on the date the first claim is filed with the board after the close of the
18 preceding 90-day period.

19 (4) If the total claims filed with the board against a residential contractor within 90 days
20 after the board receives notice of the first claim against the contractor exceed the amount
21 of the bond available for those claims, the bond shall be apportioned as the board determines,
22 subject to the priorities established under this section.

23 (5) If the total amounts due as a result of claims filed with the board within 90 days after
24 the first claim is filed do not exceed the amount of the bond available for those claims, all
25 amounts due as a result of claims filed within the 90-day period shall have priority over all
26 claims subsequently filed until the amount of the bond available for the payment of claims
27 is exhausted.

28 (6) The total amount paid from a residential contractor bond for costs, interest and at-
29 torney fees may not exceed \$3,000.

30 **SECTION 11.** (1)(a) Payments from the surety bond of a commercial contractor pursuant
31 to Construction Contractors Board order and notice are satisfied in the following priority in
32 any 90-day period:

33 (A) Board orders as a result of claims against a commercial contractor by a person fur-
34 nishing labor to a contractor or owed employee benefits by a contractor have payment pri-
35 ority to the full extent of the bond over all other types of claims.

36 (B) If the claims described in subparagraph (A) of this paragraph do not exhaust the
37 bond, then amounts due as a result of all other types of small commercial or large com-
38 mercial structure claims may be satisfied from the bond, except claims for costs, interest
39 and attorney fees.

40 (C) If claims described in subparagraphs (A) and (B) of this paragraph do not exhaust the
41 bond, then claims for costs, interest and attorney fees resulting from small commercial or
42 large commercial structure claims may be satisfied from the bond.

43 (b) A 90-day period begins on the date the first claim is filed with the board. Subsequent
44 90-day periods begin on the date the first claim is filed with the board after the close of the
45 preceding 90-day period.

1 **(2) If the total claims filed with the board against a commercial contractor within 90 days**
2 **after the board receives notice of the first claim against the contractor exceed the amount**
3 **of the bond available for those claims, the bond shall be apportioned as the board determines,**
4 **subject to the priorities established under this section.**

5 **(3) If the total amounts due as a result of claims filed with the board within 90 days after**
6 **the first claim is filed do not exceed the amount of the bond available for those claims, all**
7 **amounts due as a result of claims filed within the 90-day period shall have priority over all**
8 **claims subsequently filed until the amount of the bond available for the payment of claims**
9 **is exhausted.**

10 **SECTION 12. A commercial general contractor level 1 or level 2 that constructs a new**
11 **large commercial structure shall provide the owner with a two-year warranty of the building**
12 **envelope and penetration components against defects in materials and workmanship. The**
13 **warranty shall provide for the contractor to annually inspect the building envelope and pen-**
14 **etration components during the warranty period. The warranty need not cover conditions**
15 **resulting from improper maintenance by the owner.**

16 **SECTION 13. ORS 701.005 is amended to read:**

17 701.005. As used in this chapter:

18 **(1) “Board” means the Construction Contractors Board.**

19 **(2) “Commercial contractor” means a licensed contractor that holds an endorsement as**
20 **a:**

21 **(a) Commercial general contractor level 1;**

22 **(b) Commercial specialty contractor level 1;**

23 **(c) Commercial general contractor level 2;**

24 **(d) Commercial specialty contractor level 2; or**

25 **(e) Commercial developer.**

26 **(3) “Commercial developer” means a developer of property that is zoned for or intended**
27 **for use compatible with a small commercial or large commercial structure.**

28 **[(2)] (4) “Construction debt” means an amount owed under:**

29 **(a) A final order or arbitration award issued by the board; or**

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

31 **[(3)] (5) “Contractor” means **any of the following**:**

32 **(a) A person who, for compensation or with the intent to sell, arranges or undertakes or offers**
33 **to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,**
34 **move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other**
35 **structure, project, development or improvement attached to real estate or to do any part thereof.**
36 **[“Contractor” includes general contractors, residential-only contractors and specialty contractors as**
37 **defined in this section.]**

38 **(b) A person that purchases or owns property and constructs or for compensation ar-**
39 **ranges for the construction of one or more residential structures or small commercial**
40 **structures with the intent of selling the structures.**

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

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

1 **to learn building techniques and sells the completed structure.**

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

6 **(f) A business that supplies the services of a home inspector certified under ORS 701.350,**
7 **a lead-based paint inspector licensed under ORS 701.515 or a cross connection inspector and**
8 **backflow assembly tester certified under ORS 448.279.**

9 **(6) “Developer” means a contractor that owns property or an interest in property and**
10 **engages in the business of arranging for construction work or performing other activities**
11 **associated with the improvement of real property, with the intent to sell the property.**

12 [(4)] (7) “General contractor”:

13 **(a)** Means a contractor whose business operations require the use of more than two unrelated
14 building trades or crafts that the contractor supervises or performs in whole or part, whenever the
15 sum of all contracts on any single property, including materials and labor, exceeds an amount es-
16 tablished by rule by the board. [*“General contractor” does not include specialty contractors or limited*
17 *contractors, as described in ORS 701.085.*]

18 **(b) Does not mean a specialty contractor or a residential limited contractor.**

19 [(5)] (8) “Home inspector” means a person who, for a fee, inspects and provides written reports
20 on the overall physical condition of a residential structure and the appurtenances thereto. “Home
21 inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or
22 altered structures for compliance with the state building code.

23 [(6)] *“Inspector” means a contractor registered with the board who inspects or otherwise provides*
24 *services to a property owner or other contractor but does not substantively add to or subtract from a*
25 *structure. “Inspector” includes but is not limited to a home inspector certified under ORS 701.350, a*
26 *lead-based paint inspector licensed under ORS 701.515 and a cross connection inspector and backflow*
27 *assembly tester certified under ORS 448.279. “Inspector” does not include city or county inspectors*
28 *acting under ORS 701.225 or an inspector as defined in ORS 455.715.]*

29 **(9) “Key employee” means an employee or owner of a contractor who is a corporate of-**
30 **ficer, manager, superintendent, foreperson or lead person or any other employee identified**
31 **by the board by rule.**

32 [(7)] (10) “Large commercial structure” means a structure that is not a residential structure or
33 small commercial structure.

34 [(8)] *“Licensed developer” means a contractor who owns property or an interest in property and*
35 *arranges for construction work, if the contractor:]*

36 [(a)] *Engages in the business of arranging for construction work and performing other activities*
37 *associated with the improvement of real property, with the intent to sell the property;]*

38 [(b)] *Acts in association with one or more licensed general contractors and the general contractor*
39 *or combination of general contractors have sole responsibility for overseeing all phases of construction*
40 *activity on the property; and]*

41 [(c)] *Does not perform any construction work on the property.]*

42 [(9)] (11) “Officer” means any of the following persons:

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

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

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

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

2 (e) A trustee.

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

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

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

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

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

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

21 **(12) “Residential contractor” means a licensed contractor that holds an endorsement as**
22 **a:**

23 **(a) Residential general contractor;**

24 **(b) Residential specialty contractor;**

25 **(c) Residential limited contractor; or**

26 **(d) Residential developer.**

27 **(13) “Residential developer” means a developer of property that is zoned for or intended**
28 **for use compatible with a residential or small commercial structure.**

29 [(11) “Residential structure” means a residence, including a site-built home, modular home con-
30 structed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling
31 or duplex, or a multiunit residential building consisting of four units or less that is not part of a
32 multistructure complex of buildings.]

33 [(12) “Small commercial structure” means a nonresidential structure that has a ground area of
34 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top
35 surface of the lowest flooring to the highest interior overhead finish of the structure.]

36 **(14) “Residential structure”:**

37 **(a) Means:**

38 **(A) A residence that is a site-built home;**

39 **(B) A structure that contains one or more dwelling units and is four stories or less above**
40 **grade;**

41 **(C) A condominium, rental residential unit or other residential dwelling unit that is part**
42 **of a larger structure, if the property interest in the unit is separate from the property in-**
43 **terest in the larger structure;**

44 **(D) A modular home constructed off-site;**

45 **(E) A manufactured dwelling; or**

1 (F) A floating home as defined in ORS 830.700.

2 (b) Does not mean:

3 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both resi-
4 dential and nonresidential units;

5 (B) Transient lodging;

6 (C) A residential school or residence hall;

7 (D) A state or local correctional facility other than a local facility for persons enrolled
8 in work release programs maintained under ORS 144.460;

9 (E) A youth correction facility as defined in ORS 420.005;

10 (F) A youth care center operated by a county juvenile department under administrative
11 control of a juvenile court pursuant to ORS 420.855 to 420.885;

12 (G) A detention facility as defined in ORS 419A.004;

13 (H) A nursing home;

14 (I) A hospital; or

15 (J) A place constructed primarily for recreational activities.

16 (15) "Small commercial structure" means:

17 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, in-
18 cluding exterior walls, and a height of not more than 20 feet from the top surface of the
19 lowest flooring to the highest interior overhead finish of the structure; or

20 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure,
21 if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a
22 height of not more than 20 feet from the top surface of the lowest flooring to the highest
23 interior overhead finish of the unit.

24 [(13)] (16) "Specialty contractor" means a contractor who performs work on a structure, project,
25 development or improvement and whose operations as such do not fall within the definition of
26 "general contractor." "Specialty contractor" includes a person who performs work regulated under
27 ORS [chapter 446] 446.395.

28 **SECTION 14.** ORS 701.010 is amended to read:

29 701.010. The Construction Contractors Board may adopt rules to make licensure optional for
30 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
31 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

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

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

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

37 (4) A person working on one structure or project, under one or more contracts, when the ag-
38 gregate price of all of that person's contracts for labor, materials and all other items is less than
39 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
40 to a person who advertises or puts out any sign or card or other device that might indicate to the
41 public that the person is a contractor.

42 (5) An owner who contracts for work to be performed by a licensed contractor. This subsection
43 does not apply to a person who, in the pursuit of an independent business, constructs, remodels,
44 repairs or for compensation and with the intent to sell the structure, arranges to have constructed,
45 remodeled or repaired a structure with the intent of offering the structure for sale before, upon or

1 after completion. It is prima facie evidence that there was an intent of offering the structure for sale
2 if the person who constructed, remodeled or repaired the structure or arranged to have the struc-
3 ture constructed, remodeled or repaired does not occupy the structure after its completion.

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

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

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

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

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

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

17 (e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks,
18 arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets the appli-
19 cable bonding requirements under ORS 671.690.

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

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

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

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

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

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

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

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

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

39 (13) Units of government other than those specified in ORS 701.005 [(10)(b) and (c)] **(5)(c) and**
40 **(d)**.

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

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

1 **(16) City or county inspectors acting under ORS 701.225 or inspectors described in ORS**
2 **455.715.**

3 **SECTION 15.** ORS 701.035 is amended to read:

4 701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
5 eligible for a license with the Construction Contractors Board.

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

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

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

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

14 (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
15 limited liability companies that do not qualify as nonexempt. [*All partnerships, corporations and*
16 *limited liability companies must have an identification number issued for federal tax purposes.*]

17 (3) If a person who qualifies for a license under subsection (2)(b) of this section hires one or
18 more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the
19 person is subject to penalties under ORS 701.992 for improper licensing. The person must reapply
20 to the board in the correct class.

21 (4) The decision of the board that a person is an independent contractor applies only when the
22 person is performing work of the nature described in [*ORS 701.055 and 701.060*] **section 2 of this**
23 **2007 Act.**

24 **(5) A person that is within the exempt class described in subsection (2)(b) of this section**
25 **and is licensed as a commercial contractor shall procure and maintain workers' compen-**
26 **sation insurance as authorized by ORS 656.128.**

27 **SECTION 16.** ORS 701.055 is amended to read:

28 701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a
29 contractor unless that person has a current, valid license issued by the Construction Contractors
30 Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit
31 a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed
32 under this chapter. A partnership or joint venture is licensed for the purpose of offering to under-
33 take work as a contractor on a structure if any of the partners or joint venturers whose name ap-
34 pears in the business name of the partnership or joint venture is licensed under this chapter.

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

38 (3) A city, county or the State of Oregon may not issue a building permit to any person required
39 to be licensed under this chapter that does not have a current, valid license. A county, city or state
40 agency that requires the issuance of a permit as a condition precedent to construction, alteration,
41 improvement, demolition, movement or repair of any building or structure or the appurtenances to
42 the structure shall, as a condition for issuing the permit, require that the applicant for a permit file
43 a written statement, subscribed by the applicant. The statement must affirm that the applicant is
44 licensed under this chapter, give the license number and state that the license is in full force and
45 effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the ex-

1 exemption. The city, county or state agency shall list the contractor's license number on the permit
2 obtained by that contractor.

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

8 _____
9
10 (a) I have read and understand the Information Notice to Property Owners About Construction
11 Responsibilities; and

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

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

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

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

23 _____
24
25 (5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About
26 Construction Responsibilities" that shall describe, in nontechnical language and in a clear and co-
27 herent manner using words in their common and everyday meaning, the responsibilities property
28 owners are undertaking by acting as their own general contractor and the problems that could de-
29 velop. The responsibilities described in the form shall include, but not be limited to:

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

32 (b) Workers' compensation insurance on workers.

33 (c) Liability and property damage insurance.

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

37 (7) A city or county that requires a business license for engaging in a business subject to reg-
38 ulation under this chapter shall require that the licensee or applicant for issuance or renewal of the
39 business license file, or have on file, with the city or county, a signed statement that the licensee
40 or applicant is licensed under this chapter.

41 (8) It is prima facie evidence of doing business as a contractor if a person for that person's own
42 use performs, employs others to perform, or for compensation and with the intent to sell the struc-
43 ture, arranges to have performed any work described in ORS 701.005 [(3)] **(5)(a)** if within any
44 36-month period that person offers for sale two or more newly built structures on which that work
45 was performed.

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

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

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

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

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

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

14 (A) Names and addresses.

15 (B) License numbers.

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

18 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
19 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
20 701.010.

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

30 (14) A contractor may not perform work subject to this section for an owner of a residential
31 structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of
32 a contract was initially less than \$2,000, but during the course of performance the contract exceeds
33 that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later
34 than five days after the contractor knows or should reasonably know that the contract price will
35 exceed \$2,000. Failure to have a written contract will not void the contract.

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

38 **SECTION 16a.** ORS 701.055, as amended by section 16 of this 2007 Act, is amended to read:

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

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

4 (3) A city, county or the State of Oregon may not issue a building permit to any person required
5 to be licensed under this chapter that does not have a current, valid license **properly endorsed for**
6 **the work to be performed**. A county, city or state agency that requires the issuance of a permit
7 as a condition precedent to construction, alteration, improvement, demolition, movement or repair
8 of any building or structure or the appurtenances to the structure shall, as a condition for issuing
9 the permit, require that the applicant for a permit file a written statement, subscribed by the ap-
10 plicant. [*The statement must affirm that the applicant is licensed under this chapter, give the*] **If the**
11 **applicant is a contractor, the contractor shall provide the contractor's** license number and
12 state that the license is in full force and effect[, *or, if the applicant is exempt from licensing under*
13 *this chapter, list the basis for the exemption*]. **If the applicant is exempt from licensing under this**
14 **chapter, the applicant shall state the basis for the exemption**. The city, county or state agency
15 shall list the contractor's license number on the permit obtained by that contractor.

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

21 _____
22
23 (a) I have read and understand the Information Notice to Property Owners About Construction
24 Responsibilities; and

25 (b) I own, reside in or will reside in the completed dwelling. My **residential** general contractor
26 is _____, Construction Contractors Board license no. _____, license expiration
27 date_____. I will instruct my [*general*] contractor that all subcontractors who work on this
28 dwelling must be licensed with the Construction Contractors Board **and properly endorsed for the**
29 **work to be performed**; or

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

32 (d) I will be my own [*general*] contractor and, if I hire [*subcontractors*] **contractors**, I will hire
33 only [*subcontractors*] **contractors** licensed with the Construction Contractors Board **and properly**
34 **endorsed for the work to be performed**.

35 (e) If I change my mind and do hire a **residential** general contractor, I will contract with a
36 [*general*] contractor who is licensed with the Construction Contractors Board and **properly en-**
37 **dorsed for the work to be performed**. I will immediately notify the office issuing this building
38 permit of the name **and license number** of the [*general*] contractor _____.

39 _____
40
41 (5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About
42 Construction Responsibilities" that shall describe, in nontechnical language and in a clear and co-
43 herent manner using words in their common and everyday meaning, the responsibilities property
44 owners are undertaking by acting as their own [*general*] contractor and the problems that could
45 develop. The responsibilities described in the form shall include, but not be limited to:

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

3 (b) Workers' compensation insurance on workers.

4 (c) Liability and property damage insurance.

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

8 (7) A city or county that requires a business license for engaging in a business subject to reg-
9 ulation under this chapter shall require that the licensee or applicant for issuance or renewal of the
10 business license file, or have on file, with the city or county, a signed statement that the licensee
11 or applicant is licensed under this chapter.

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

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

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

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

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

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

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

30 (A) Names and addresses.

31 (B) License numbers.

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

34 (12) A contractor may not hire [*any subcontractor or other*] a contractor to perform work unless
35 the [*subcontractor or*] contractor is licensed under this chapter **and properly endorsed for the**
36 **work to be performed** or **is** exempt from licensure under ORS 701.010.

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

1 (14) A contractor may not perform work subject to this section for an owner of a residential
2 structure without a written contract if the aggregate contract price exceeds \$2,000. If the price of
3 a contract was initially less than \$2,000, but during the course of performance the contract exceeds
4 that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later
5 than five days after the contractor knows or should reasonably know that the contract price will
6 exceed \$2,000. Failure to have a written contract will not void the contract.

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

9 **SECTION 17.** ORS 701.060 is amended to read:

10 701.060. [(1)] Any contractor licensed under this chapter may at any time apply for [a license in
11 another category] **an additional or different endorsement**. The Construction Contractors Board
12 may charge a [transfer] fee not to exceed \$20 for each [additional license] **application**.

13 [(2) If a contractor applies for a license pursuant to subsection (1) of this section all construction,
14 alteration, improvement, moving over public highways, roads or streets, demolition or repair performed
15 by that contractor on buildings of all types shall be subject to the provisions of this chapter and to
16 regulation by the board. Such licensure shall be exclusive as provided in ORS 701.055 (10).]

17 **SECTION 18.** ORS 701.065 is amended to read:

18 701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a
19 claim of a construction lien, or commence a claim with the Construction Contractors Board, in ar-
20 bitration or in any court of this state for compensation for the performance of any work or for the
21 breach of any contract for work that is subject to this chapter, unless the contractor had a valid
22 license issued by the board **and properly endorsed for the work performed**:

- 23 (a) At the time the contractor bid or entered into the contract for performance of the work; and
24 (b) Continuously while performing the work for which compensation is sought.

25 (2) The board, arbitrator or court shall not apply the provisions of subsection (1) of this section
26 to a lien or claim if the board, arbitrator or court determines that:

27 (a) The contractor either did not have a valid license **with a proper endorsement** at any time
28 required under subsection (1) of this section, or had an initial issuance thereof, and:

29 (A) The contractor was not aware of the requirement that the contractor be licensed **or prop-**
30 **erly endorsed for the work performed**, and the contractor submitted a completed application for
31 a license within a number of days established by the board, but not more than 90 days, of the date
32 the contractor became aware of the requirement;

33 (B) At the time the contractor perfected a claim of a construction lien or commenced any other
34 claim subject to the provisions of subsection (1) of this section, the contractor was licensed by the
35 board **and properly endorsed for the work performed**; and

36 (C) Enforcement of the provisions of subsection (1) of this section would result in substantial
37 injustice to the contractor;

38 (b) The contractor was licensed by the board for some but not all of the times required under
39 subsection (1) of this section and had a lapse in such license and:

40 (A) The contractor was not aware of the lapse in the license for more than a number of days
41 established by the board, but not to exceed 90 days, before submitting a completed application for
42 license renewal with the board;

43 (B) Except for perfection of a claim of a construction lien and a suit to foreclose the lien, at the
44 time the contractor commenced any other claim subject to the provisions of subsection (1) of this
45 section the contractor's license was renewed under ORS 701.115 to include the entire time period

1 for which a license was required under subsection (1) of this section; and

2 (C) For perfection of a claim of a construction lien and a suit to foreclose the lien, the con-
3 tractor's license was renewed under ORS 701.115 for the entire time period for which a license was
4 required under subsection (1) of this section, but not later than 90 days following perfection of the
5 lien; **or**

6 *[(c)(A) The contractor is a licensed developer and did not have a valid license during all or part
7 of the period described in subsection (1) of this section;]*

8 *[(B) The licensed developer was unaware of the license requirement and obtained a license within
9 a time established by the board, not to exceed 90 days after the licensed developer learned of the re-
10 quirement;]*

11 *[(C) The licensed developer was licensed at the time the licensed developer perfected the lien or
12 commenced the claim; and]*

13 *[(D) Enforcement of subsection (1) of this section would result in substantial injustice to the li-
14 censed developer; or]*

15 *[(d)]* (c) The claim:

16 (A) Is directed against a person or entity that:

17 (i) Is subject to this chapter or ORS chapter 671 or 672;

18 (ii) Provides construction or design labor or services of any kind; or

19 (iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, sys-
20 tems or products; and

21 (B) Arises out of defects, deficiencies or inadequate performance in the construction, design,
22 labor, services, materials, supplies, equipment, systems or products provided.

23 (3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly vio-
24 lates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect a claim of a
25 construction lien, or commence a claim with the board, in arbitration or in any court of this state
26 for compensation for the performance of any work on a residential structure or for the breach of
27 any contract for work on a residential structure that is subject to this chapter.

28 **SECTION 19.** ORS 701.072 is amended to read:

29 701.072. (1) The Construction Contractors Board, by rule, shall impose training requirements for
30 individuals and businesses seeking to be licensed under this chapter. The training required by the
31 board must relate to business practices and laws affecting construction contractors. The board shall
32 adopt standards for programs that provide training that meets the requirements of this subsection.

33 (2) In establishing training requirements under subsection (1) of this section, the board shall
34 take into consideration the availability of training programs within the state and shall encourage
35 training providers to use the most up-to-date technology. The board shall recognize and grant credit
36 for training provided by private organizations if the training program meets the standards estab-
37 lished by the board under subsection (1) of this section. The board periodically shall review the
38 qualifications of private organizations and instructors to determine compliance with the program
39 standards. The board shall develop and make available to the public a list of public and private
40 programs that provide training that meets the training requirements established by the board under
41 subsection (1) of this section.

42 (3) The board, by rule, shall approve a test for applicants for licensing under ORS 701.075. The
43 test shall measure the applicant's knowledge regarding business practices and laws that are the
44 subject of the training required under subsection (1) of this section.

45 (4) Subsections (1) and (3) of this section do not apply to an applicant for licensing **with**

1 **endorsement solely** as a [*licensed*] **residential or commercial** developer.

2 **SECTION 20.** ORS 701.075 is amended to read:

3 701.075. (1) An applicant for a construction contractor license must submit the application on
4 a form prescribed by the Construction Contractors Board. The application shall include, but not be
5 limited to, the following information regarding the applicant:

6 (a) [*Classification of the license*] **The endorsement** being sought.

7 (b) A list of construction debts involving the applicant, or an owner or officer of the applicant,
8 if the order, award, penalty or judgment that establishes the debt was issued within the preceding
9 five years.

10 (c) Social Security number.

11 (d) Workers' compensation insurance account number, if the applicant is required to have
12 workers' compensation insurance.

13 (e) Unemployment insurance account number, if the applicant is required to have unemployment
14 insurance.

15 (f) State withholding tax account number, if the applicant is required to withhold state income
16 tax.

17 (g) Federal employer identification number, if the applicant is required to have a federal em-
18 ployer identification number.

19 (h) The name and address of:

20 (A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited
21 liability partnership.

22 (B) The general partner, if the applicant is a limited partnership.

23 (C) Each joint venturer, if the applicant is a joint venture.

24 (D) The owner, if the applicant is a sole proprietorship.

25 (E) The officers, if the applicant is a corporation.

26 (F) The manager and each member, if the applicant is a manager-managed limited liability com-
27 pany.

28 (G) Each member, if the applicant is a member-managed limited liability company.

29 (i) The name and address of the following if the applicant is a partnership, limited liability
30 partnership, foreign limited liability partnership, joint venture, manager-managed limited liability
31 company or member-managed limited liability company:

32 (A) Each partner in a partnership, limited liability partnership or foreign limited liability part-
33 nership that is a partner, joint venturer or member of the applicant.

34 (B) Each general partner in a limited partnership that is a partner, joint venturer or member
35 of the applicant.

36 (C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the
37 applicant.

38 (D) The manager and each member of a manager-managed limited liability company that is a
39 partner, joint venturer or member of the applicant.

40 (E) Each member of a member-managed limited liability company that is a partner, joint
41 venturer or member of the applicant.

42 (F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.

43 (G) The general partner in a limited partnership that is a partner, joint venturer or member of
44 the applicant.

45 (H) Each individual who has a controlling ownership interest in, or management authority over,

1 the applicant and who meets criteria adopted by the board by rule.

2 (j) The basis on which the applicant meets the standards for independent contractor status under
3 ORS 670.600.

4 (2) The application described in subsection (1) of this section must be accompanied by proof
5 satisfactory to the board that the applicant:

6 (a) Is in compliance with ORS 701.078.

7 (b) Has the legal capacity to enter into contracts.

8 (3) Subsection (2)(a) of this section does not apply to [*a licensed*] **an applicant for licensing**
9 **with endorsement solely as a residential or commercial** developer.

10 (4) An applicant shall conform to the information provided by the applicant on the application
11 and to the terms of the application.

12 **SECTION 21.** ORS 701.078 is amended to read:

13 701.078. (1) As used in this section, “responsible managing individual” means an individual who:

14 (a)(A) Is an owner; or

15 (B) Is an employee of a business, designated by the owner, who exercises management or su-
16 pervisory authority over the construction activities of the business; and

17 (b)(A) Has successfully completed the training and testing required for licensing under ORS
18 701.072 within a period identified by the Construction Contractors Board by rule;

19 (B) Has demonstrated experience required by the board by rule; or

20 (C) Has complied with the licensing requirements of ORS 446.395.

21 (2) A business licensed under this chapter must at all times have at least one responsible man-
22 aging individual.

23 (3) Subsection (2) of this section does not apply to [*a licensed*] **a business licensed with**
24 **endorsement solely as a residential or commercial** developer.

25 **SECTION 22.** ORS 701.085 is amended to read:

26 701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the
27 Construction Contractors Board a surety bond with one or more corporate sureties authorized to
28 do business in this state in the amount set forth in [*subsections (2) to (5) of this section*] **section 3**
29 **or 4 of this 2007 Act.**

30 (2) **If an applicant for issuance, renewal or an additional endorsement of a license will**
31 **hold endorsements as both a residential contractor and a commercial contractor, the appli-**
32 **cant shall file with the board a surety bond for each endorsement in the amount set forth**
33 **in section 3 or 4 of this 2007 Act.**

34 (3) The surety bond must provide that the applicant, with regard to work subject to this chapter,
35 will pay claims ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this
36 [*subsection*] **section** shall remain in effect for at least one year or until depleted by claims paid **as**
37 **provided** under ORS 701.150 **and sections 10 and 11 of this 2007 Act**, unless the surety sooner
38 cancels the bond. At the discretion of the surety the bond may be continued for an additional period
39 by continuation certificate. Except as provided in subsection [(6)] (4) of this section, the aggregate
40 liability of the surety under the bond for claims against the bond may not exceed the penal sum of
41 the bond no matter how many years the bond is in force. Except as provided in subsection [(6)] (4)
42 of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the
43 bond may not increase the liability of the surety.

44 [(2) *A general contractor or licensed developer shall obtain a surety bond in the amount of*
45 *\$15,000.*]

1 [(3) *A specialty contractor shall obtain a surety bond in the amount of \$10,000.*]

2 [(4) *An inspector shall obtain a surety bond in the amount of \$10,000.*]

3 [(5) *The board may reduce the amount of the surety bond required by this section to \$5,000 for a*
4 *contractor upon a showing that the contractor does not perform work as a contractor exceeding \$40,000*
5 *in gross annual volume and does not enter into contracts that exceed \$5,000. The board shall designate*
6 *the contractor as a limited contractor.*]

7 [(6)] (4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to
8 a board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the
9 bond of the licensee. The new surety bond must be in the **applicable** amount set forth in [subsections
10 (2) to (5) of this section] **section 3 or 4 of this 2007 Act** unless a higher amount is required by a
11 board condition or rule described in subsection [(7) or (8)] (5) or (6) of this section. The board may
12 allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for
13 the full penal sum of the bond, notwithstanding payment by the surety on the claim.

14 [(7)] (5) If the amount the licensee must pay against the bond under **subsection (3) of this**
15 **section** exceeds the amount of the bond, the board shall suspend the contractor's license until the
16 amount owed is paid. The board, as a condition of ending the suspension, may require a contractor
17 requesting reinstatement of a license to file a bond of an amount up to five times as much as the
18 amount required ordinarily of a licensee under [this section] **section 3 or 4 of this 2007 Act**.

19 [(8)] (6) The board by rule may establish conditions for applicants or persons licensed under this
20 chapter under which the applicant or licensee must file a bond of an amount up to five times as
21 much as the amount required ordinarily of an applicant or licensee under [this section] **section 3**
22 **or 4 of this 2007 Act**. The board may reduce the amount of bond it would otherwise require if the
23 contractor demonstrates satisfactory completion of approved elective classes on dispute resolution
24 and prevention, basic accounting and record keeping or such other classes as the board may pre-
25 scribe.

26 [(9)] (7) The bond required under this section is for the exclusive purpose of payment of final
27 orders and arbitration awards of the board in accordance with this chapter.

28 [(10)] (8) Upon determination under ORS 701.145 or 701.146 of a claim against a contractor who
29 holds a bond required under this section, the board shall notify the surety on the bond of the final
30 order in a manner determined by the board by rule. The notification shall include a list of all claims
31 upon which a final order has been issued.

32 [(11)] (9) A suit or action may not be commenced against a surety on a bond required under this
33 section until 30 days after the date that the surety is notified by the board under ORS 701.150 that
34 payment is due on the claim.

35 [(12)] (10) In any action against a surety on a bond under this section that is based on the
36 failure of the surety to pay a claim or on the denial of a claim by the surety, the court may award:

37 (a) Costs;

38 (b) Reasonable attorney fees to the prevailing party as part of the costs; and

39 (c) Twice the amount of any damages that the board ordered the surety to pay on the claim, if
40 the surety arbitrarily and capriciously refused to pay upon order of the board.

41 **SECTION 23.** ORS 701.105 is amended to read:

42 701.105. (1) Except as provided in subsection (2) of this section, a contractor who possesses a
43 license as required under this chapter shall have in effect public liability, personal injury and
44 property damage insurance covering the work of the contractor that is subject to this chapter, for
45 an amount not less than **the applicable amount set forth in section 3 or 4 of this 2007 Act.**[:]

1 *[(a) \$500,000 for a general contractor or licensed developer.]*

2 *[(b) \$300,000 for a residential-only specialty contractor.]*

3 *[(c) \$500,000 for all other specialty contractors.]*

4 *[(d) \$100,000 for a limited contractor.]*

5 *[(e) \$300,000 for an inspector.]*

6 (2) The Construction Contractors Board by rule, in consultation with the Department of Consumer and Business Services, may allow a *[general or specialty contractor that is a residential-only]* **residential general, residential specialty or residential limited** contractor to provide an alternative form of security approved by the board instead of procuring a public liability, personal injury and property damage insurance policy. The board may approve an alternative form of security if the board determines that the alternative form of security provides protection to the public equivalent to the protection provided by an insurance policy in the amounts otherwise applicable to the *[residential-only contractor under subsection (1) of this section]* **residential general, residential specialty or residential limited contractor under section 3 of this 2007 Act.** A board-approved alternative form of security may consist of a combination of financial resources.

16 (3) A *[residential-only]* **residential general, residential specialty or residential limited** contractor who provides a board-approved alternative form of security under subsection (2) of this section is considered for purposes of this chapter to have obtained insurance *[described in]* **as required by** subsection (1) of this section. This subsection does not subject to regulation as an insurer a person who issues all or part of an alternative form of security, unless the alternative form of security otherwise qualifies as an insurance product.

22 (4) The contractor shall provide satisfactory evidence to the board at the time of licensure and renewal that the insurance policy or board-approved alternative form of security required by this section has been procured and is in effect.

25 **SECTION 24.** ORS 701.105, as amended by section 2, chapter 766, Oregon Laws 2003, is amended to read:

27 701.105. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, for an amount not less than **the applicable amount set forth in section 3 or 4 of this 2007 Act.***[:]*

31 *[(a) \$500,000 for a general contractor or licensed developer.]*

32 *[(b) \$300,000 for a residential-only specialty contractor.]*

33 *[(c) \$500,000 for all other specialty contractors.]*

34 *[(d) \$100,000 for a limited contractor.]*

35 *[(e) \$300,000 for an inspector.]*

36 (2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect.

39 **SECTION 25.** ORS 701.115 is amended to read:

40 701.115. (1) A license is valid for two years from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.135.

42 (2) A license may be renewed by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required education, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

1 (3) The board may vary the dates of license renewal by giving to the licensee written notice of
2 the renewal date assigned and by making appropriate adjustments in the fee for the license renewal
3 application.

4 (4) If a contractor applies for renewal not more than one year after the contractor's license
5 lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the
6 board may renew the lapsed license. The board may designate the effective date of renewal as the
7 last date on which the contractor was licensed.

8 (5) A contractor may convert a license to inactive status if the contractor is not engaged in
9 work as a contractor. A contractor having an inactive license is subject to board licensing re-
10 quirements and application fees, but is not subject to the bonding requirement of ORS 701.085 or the
11 insurance requirement of ORS 701.105. **A commercial general or commercial specialty contrac-**
12 **tor having an inactive license is not subject to the key employee continuing education re-**
13 **quirements of section 9 of this 2007 Act.** An inactive license is not considered a valid license for
14 purposes of offering to undertake construction work, submitting a bid for construction work, ob-
15 taining a building permit or performing construction work. A license may not be placed or main-
16 tained in inactive status more than once during any two-year licensing term.

17 (6) The board shall issue a pocket-card certificate of licensure to a contractor licensed under
18 this chapter indicating the type of license issued.

19 **SECTION 26.** ORS 701.135 is amended to read:

20 701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
21 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
22 determines after notice and opportunity for hearing:

23 (a) That the licensee or applicant has violated [*ORS 701.055 or 701.078*] **a provision of this**
24 **chapter.**

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

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

28 **(d) That the licensee has knowingly assisted a licensed contractor to perform work for**
29 **which the contractor is not properly endorsed.**

30 [(*d*)] (e) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093
31 because the licensee or applicant wrongfully failed to perform a contractual duty to pay money to
32 the person claiming the lien.

33 [(*e*)] (f) That the licensee has knowingly provided false information to the board.

34 [(*f*)] (g) That the licensee has worked without a construction permit where a permit is required
35 and the work resulted in a claim being filed with the board. For purposes of this paragraph, "con-
36 struction permit" includes a building permit, electrical permit, mechanical permit or plumbing per-
37 mit.

38 [(*g*)] (h) That the number of licensed contractors working together on the same task on the same
39 job site, where one of the contractors is [*licensed*] **classed** as exempt under ORS 701.035 (2)(b), ex-
40 ceeded the following:

41 (A) Two sole proprietors;

42 (B) One partnership;

43 (C) One corporation; or

44 (D) One limited liability company.

45 [(*h*)] (i) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been

1 convicted of one of the following crimes:

- 2 (A) Murder;
- 3 (B) Assault in the first degree;
- 4 (C) Kidnapping;
- 5 (D) Rape, sodomy or unlawful sexual penetration;
- 6 (E) Sexual abuse;
- 7 (F) Arson in the first degree;
- 8 (G) Robbery in the first degree;
- 9 (H) Theft in the first degree; or
- 10 (I) Theft by extortion.

11 [(i)] (j) That the licensee or applicant has not, within 90 days after the date when payment was
12 received from the public contracting agency, or contractor in the case of a subcontractor, made
13 payment to any person for supplying labor or materials contracted for with a public contract for a
14 public improvement plus the amount of interest due.

15 [(j)] (k) That the licensee or applicant has repeatedly reported bad faith or false claims of non-
16 payment against contractors or subcontractors.

17 [(k)] (L) That the licensee or applicant has engaged in conduct as a contractor that is dishonest
18 or fraudulent and that the board finds injurious to the welfare of the public.

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

- 23 (A) Lack of a surety bond required by ORS 701.085;
- 24 (B) Lack of liability insurance required by ORS 701.105;
- 25 (C) Hiring employees while [*licensed*] **classified** as exempt under ORS 701.035; or
- 26 (D) Conduct as a construction contractor that is dishonest or fraudulent.

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

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

41 (4) A certified copy of the record of conviction shall be conclusive evidence of a conviction un-
42 der subsection [(1)(h)] (1)(i) of this section.

43 (5) If the board suspends or revokes the license of an individual contractor or contractor busi-
44 ness for a violation of subsection [(1)(g)] (1)(h) of this section, the board may not restore or reissue
45 the license unless the individual contractor or a responsible managing individual, as defined in ORS

1 701.078, for the contractor business has successfully completed the training and testing described in
2 ORS 701.072.

3 **SECTION 27.** ORS 701.138 is amended to read:

4 701.138. (1) Every person offering to undertake or undertaking construction of building sewer
5 piping shall comply with the requirements of ORS chapter 701.

6 (2) Every person submitting a bid or a written estimate of the costs to construct building sewer
7 piping shall provide to potential customers, prior to an agreement to perform, the following:

8 (a) The person's Construction Contractors Board license number *[and category]*;

9 (b) The applicable bonding and liability coverage; and

10 (c) The statement described in ORS 701.055 (3).

11 (3) Any person licensed under ORS 701.055 may install a building sewer after obtaining a permit
12 for plumbing inspection under ORS 447.095.

13 (4) As used in this section, "building sewer" means that part of the system of drainage piping
14 that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside
15 the building or structure within which the sewage originates.

16 **SECTION 28.** ORS 701.139 is amended to read:

17 701.139. *[Except as provided in ORS 701.148 (2), the Construction Contractors Board may resolve*
18 *a dispute against a licensed contractor only if a claim is made against the contractor's surety bond*
19 *required by ORS 701.085. In order to have access to the bond,]* **The Construction Contractors**
20 **Board may determine the validity of a claim described in ORS 701.140 filed against a licensed**
21 **contractor.** A person must file *[a claim of a type described in ORS 701.140]* **the claim** within the
22 applicable time limitation described in ORS 701.143. The claim must be filed and resolved as follows:

23 (1) **A claim against a residential contractor that is not also endorsed as a commercial**
24 **contractor must be resolved as provided in ORS 701.145.**

25 (2) **A claim against a commercial contractor that is not also endorsed as a residential**
26 **contractor must be resolved as provided in ORS 701.146.**

27 (3) **A claim against a contractor that is endorsed as both a residential contractor and a**
28 **commercial contractor:**

29 [(1)] (a) *[A claim]* That involves work on a residential structure or an appurtenance to the
30 structure must be resolved as provided under ORS 701.145.

31 [(2)] (b) A claim that involves work on a small commercial structure or an appurtenance
32 *[thereto]* **to the structure** may be resolved as provided in ORS 701.145 or 701.146, **at the claim-**
33 **ant's election.**

34 [(3)] (c) *[Except as provided in subsections (4) and (5) of this section, a claim]* That involves work
35 on a large commercial structure or an appurtenance *[thereto]* **to the structure** must be resolved as
36 provided in ORS 701.146.

37 [(4)] *A claim by an owner that involves work on a large commercial structure or an appurtenance*
38 *thereto when the total contract involved in the claim is \$25,000 or less may be resolved as provided in*
39 *ORS 701.145 or 701.146.]*

40 [(5)] (4) Notwithstanding subsections (1) to [(4)] (3) of this section **and except as provided in**
41 **ORS 701.148**, with prior agreement of the claimant and the licensed contractor, a claim may be re-
42 solved by the board through binding arbitration under ORS 701.148.

43 **SECTION 29.** ORS 701.140 is amended to read:

44 701.140. A claim *[made against a licensed contractor's bond required by ORS 701.085]* **under ORS**
45 **701.139** must arise from the performance, or a contract for the performance, of work that *[is subject*

1 *to this chapter*] **requires a contractor license issued by the Construction Contractors Board.**

2 The claim must be of one or more of the following types:

3 (1) A claim against a contractor by the owner of a structure or other real property for the fol-
4 lowing:

5 (a) Negligent work.

6 (b) Improper work.

7 (c) Breach of contract.

8 (2) A claim against a contractor by the owner of a structure or other real property to discharge,
9 or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075
10 to 87.093 under circumstances described under this subsection. If the claim is processed under ORS
11 701.145, the Construction Contractors Board may reduce a claim by any amount the claimant owes
12 the contractor. The board shall process claims described in this subsection under ORS 701.145 only
13 if:

14 (a) The owner paid the contractor for that contractor's work subject to this chapter; *[and]*

15 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to
16 87.093 because the contractor failed to pay the person claiming the lien for that person's contribu-
17 tion toward completion of the improvement[.]; **and**

18 **(c) The claim is described in ORS 701.139 (1) or (3)(a) or (b).**

19 (3) A claim against a licensed subcontractor by a licensed contractor for the following:

20 (a) Negligent work;

21 (b) Improper work; or

22 (c) Breach of contract.

23 (4) A claim by a person furnishing labor to a contractor **or owed employee benefits by a**
24 **contractor.**

25 (5) A claim, as limited by rule of the board, by a person furnishing material or renting or sup-
26 plying equipment to a contractor. The minimum limit set by the board shall not exceed \$150.

27 (6) A claim by a subcontractor against a contractor for unpaid labor or materials arising out
28 of a contract.

29 **SECTION 30.** ORS 701.145 is amended to read:

30 701.145. For a claim described in ORS 701.139 *[(1) involving work on a residential structure or*
31 *an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial*
32 *structure or an appurtenance thereto that is not resolved under ORS 701.146 or an owner's claim de-*
33 *scribed in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto*
34 *that is not resolved under ORS 701.146]* **(1) or (3)(a) or a claim under ORS 701.139 (3)(b) that a**
35 **claimant elects to have resolved under this section:**

36 (1) The person having the claim must file with the Construction Contractors Board a statement
37 of the claim in a form prescribed by the board.

38 (2) The board may suspend processing of the claim if:

39 (a) The same facts and issues involved in the claim have been submitted to a court of competent
40 jurisdiction for determination or have been submitted to any other entity authorized by law or the
41 parties to effect a resolution or settlement; or

42 (b) The board determines that the nature or complexity of the claim is such that a court is the
43 appropriate forum for the adjudication of the claim.

44 (3) The board may dismiss or close the claim as established by rule of the board if any of the
45 following conditions apply:

1 (a) The claimant does not permit the contractor against whom the claim is filed to be present
2 at an on-site investigation made by the board.

3 (b) The board determines that the contractor against whom the claim is filed is capable of
4 complying with recommendations made by the board relative to the claim, but the claimant does not
5 permit the contractor to comply with the recommendations. The board may refuse to accept or fur-
6 ther process a claim under this paragraph only if the contractor was licensed at the time the work
7 was first performed and is licensed at the time the board makes its recommendations.

8 (c) The amount in controversy is less than an amount adopted by the board and not more than
9 \$250.

10 (4) Upon acceptance of the statement of claim, the board shall give notice to the contractor
11 against whom the claim is made and shall initiate proceedings to determine the validity of the claim.
12 If, after investigation, the board determines that a violation of this chapter or of any rule adopted
13 thereunder has occurred, or damage has been caused by the contractor, the board may recommend
14 to the contractor such action as the board considers appropriate to compensate the claimant. If the
15 contractor performs accordingly, the board shall give that fact due consideration in any subsequent
16 disciplinary proceeding brought by the board. If a claim is for less than \$1,000, the board may pro-
17 cess the claim without conducting an on-site investigation.

18 (5) Subject to ORS 701.148, if the board is unable to resolve the claim under subsection (4) of
19 this section, the board may issue a contested case notice under ORS 183.415 and:

20 (a) Issue a proposed default order under ORS 183.415 to become effective only if a party does
21 not request a contested case hearing; or

22 (b) Refer the matter for hearing.

23 (6) The board shall send a copy of the notice and any proposed order described in subsection (5)
24 of this section to the surety on the contractor bond required by ORS 701.085.

25 **SECTION 31.** ORS 701.146 is amended to read:

26 701.146. For a claim described in ORS 701.139 [(3) *involving work on a large commercial structure*
27 *or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commer-*
28 *cial structure or an appurtenance thereto that is not resolved under ORS 701.145 or an owner's claim*
29 *described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance*
30 *thereto that is not resolved under ORS 701.145] (2) or (3)(c) or a claim under ORS 701.139 (3)(b)*
31 **that a claimant elects to have resolved under this section:**

32 (1) The person seeking to file the claim must:

33 (a) Bring an action on the claim against the licensed contractor in a court of competent juris-
34 diction; or

35 (b) Initiate a proceeding to resolve the claim through binding arbitration substantially in con-
36 formance with ORS 36.600 to 36.740.

37 (2) The claimant must file the claim with the Construction Contractors Board by delivering to
38 the board a copy of the complaint or the demand for arbitration or other document necessary to
39 initiate arbitration. The complaint, demand or other document must be accompanied by a statement
40 of claim in a form prescribed by board rule. The claimant must also give notice to the surety on the
41 bond by delivering to the surety a copy of the complaint, demand for arbitration or other document
42 necessary to initiate arbitration and a copy of the statement of claim. Delivery to the board and
43 the surety must be accomplished by certified mail, return receipt requested, no later than the earlier
44 of:

45 (a) The 90th day after the complaint, demand or other document was filed or made;

1 (b) The 14th day before the first day of trial or arbitration; or

2 (c) The 30th day before:

3 (A) The court issues a judgment on the complaint; or

4 (B) The arbitrator issues an award on the arbitration.

5 (3) Filing the claim with the board under subsection (2) of this section constitutes filing the
6 claim for purposes of establishing timeliness of the claim under ORS 701.143 and priority of the
7 claim under *[ORS 701.150]* **section 11 of this 2007 Act.**

8 (4) Except as provided in this subsection and subsection (7) of this section, if the claimant
9 properly gives notice to the surety under subsection (2) of this section, a judgment or award against
10 the contractor entered in the action or arbitration is binding on the surety. If the claimant delivers
11 the notice required under subsection (2) of this section to the wrong surety, the surety receiving the
12 notice may avoid being bound by a judgment or award by delivering notice of the mistake to the
13 claimant or the claimant's attorney of record, and to the board, on or before the 30th day after the
14 surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must
15 be by certified mail, return receipt requested, or by facsimile machine or other form of transmission
16 with an acknowledgment of receipt.

17 (5) A surety under subsection (2) of this section has an absolute right to intervene in an action
18 or arbitration brought or initiated under subsection (1) of this section. A claimant may not join a
19 surety as a party to an action or arbitration unless the claimant disputes the validity or timeliness
20 of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to
21 the surety of the notice required by subsection (2) of this section. If the surety elects to intervene
22 or is joined as a party, the surety is bound by all issues of fact and law determined by the court
23 or arbitrator and may not seek board review of those determinations.

24 (6) If a court issues a judgment on an action, or reduces an arbitration award to judgment,
25 against a contractor on a claim described in subsection (1) of this section, the claimant must deliver
26 a certified copy of the judgment to the board and to the surety no later than the 30th day after entry
27 of the judgment in order to retain a claim against the bond. The entry of a final judgment against
28 the contractor concludes the contractor's involvement in any proceedings to determine whether the
29 bond is subject to payment of the claim. The claimant and the surety are the only parties to the
30 administrative process set forth in subsection (7) of this section.

31 (7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection
32 (6) of this section, the board shall issue a proposed order in the amount of the judgment together
33 with any costs, interest and attorney fees awarded under the judgment, to the extent that the
34 judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination
35 of the claim is limited to whether the claim comes within the jurisdiction of the board and is subject
36 to payment by the surety. The board shall issue the proposed order in a form that indicates the
37 surety's maximum liability to the claimant. If a hearing is not requested within the time set forth
38 in the proposed order, the proposed order becomes final without any further action by the board.
39 If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section,
40 the board may determine:

41 (a) Whether the claim was timely filed with the board as provided in ORS 701.143.

42 (b) Whether the surety received timely notice as provided in subsections (2) and (6) of this sec-
43 tion.

44 (c) Whether the claim is for work subject to this chapter.

45 (d) The extent of the surety's liability to the claimant.

1 **SECTION 32.** ORS 701.148 is amended to read:

2 701.148. (1) Subject to subsection (4) of this section, if the resolution of a claim under ORS
3 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be
4 conducted as a binding arbitration under rules adopted by the board under subsection (3) of this
5 section. This subsection does not authorize the board to require binding arbitration of a claim that
6 is subject to ORS 701.146.

7 (2) The board may use mediation or arbitration to resolve a construction dispute between any
8 parties who agree to follow the rules of the board, [*including but not limited to parties to a claim that*
9 *is subject to ORS 701.146*] **other than a dispute involving work on a large commercial**
10 **structure.**

11 (3) Except as provided in this subsection, rules adopted by the board to regulate arbitration
12 under subsections (1) and (2) of this section must substantially conform with the provisions of ORS
13 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.
14 The rules may:

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

17 (b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;

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

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

22 (e) Include any other provision necessary to conform the arbitration to this chapter.

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

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

30 (b) If the party files a complaint in court, the party must, within the time specified in paragraph
31 (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by
32 board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the
33 claimant must allege all elements of the claim in the complaint. If the complaint is filed by the
34 contractor against whom a claim is alleged, the complaint may be a complaint for damages, a com-
35 plaint for declaratory judgment or other complaint that allows the claimant to file a response al-
36 leging the elements of the claim. The claimant has the burden of proving the elements of the claim
37 in any action described in this paragraph.

38 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
39 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
40 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
41 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
42 tration.

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

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

3 (f) The board may adopt a rule that a contested case hearing for a claim of less than \$1,000 is
4 not available under this subsection.

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

7 (5) The board may refuse to accept a dispute for mediation or arbitration under subsection (1)
8 or (2) of this section if the board determines that the nature or complexity of the dispute is such that
9 a court or other forum is more appropriate for resolution of the dispute.

10 **SECTION 33.** ORS 701.150 is amended to read:

11 701.150. (1) **A Construction Contractors Board final order that is not paid by the con-
12 tractor and that:**

13 **(a) Arises out of a claim filed under ORS 701.145 must be satisfied from a bond required
14 for a residential contractor.**

15 **(b) Arises out of a claim filed under ORS 701.146 must be satisfied from a bond required
16 for a commercial contractor.**

17 (2) If a [*Construction Contractors*] board final order is not paid by the contractor, the board shall
18 notify the surety on the bond. The surety may not pay a claim until the surety receives notice from
19 the board that the claim is ready for payment.

20 [(2) *If an order of the board that determines a claim under ORS 701.145 becomes final by operation
21 of law or on appeal and remains unpaid 10 days after the date the order becomes final, the claimant
22 may file the order with the county clerk in any county of this state.*]

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

27 [(4) *Payments from the surety bond of a contractor pursuant to board order and notice are satisfied
28 in the following priority in any 90-day period. A 90-day period begins on the date the first claim is filed
29 with the board. Subsequent 90-day periods begin on the date the first claim is filed with the board after
30 the close of the preceding 90-day period. Within a 90-day period:*]

31 [(a) *Board orders as a result of claims against a contractor by the owner of a residential or small
32 commercial structure have payment priority to the full extent of the bond over all other types of
33 claims.*]

34 [(b) *If the claims described in paragraph (a) of this subsection do not exhaust the bond, then
35 amounts due as a result of all other types of residential or small commercial structure claims filed
36 within that 90-day period may be satisfied from the bond, except that the total amount paid from any
37 one bond to nonowner claimants may not exceed \$3,000.*]

38 [(c) *If payments involving residential and small commercial structures do not exhaust the bond,
39 board orders and notice involving large commercial structure claims are satisfied in the following pri-
40 ority, except that the total amount paid from any one bond to nonowner claimants may not exceed
41 \$3,000:*]

42 [(A) *Labor, including employee benefits.*]

43 [(B) *All other claims involving large commercial structures except costs, interest and attorney
44 fees.*]

45 [(C) *Any costs, interest and attorney fees the plaintiff may be entitled to recover.*]

1 *[(d) If the total claims filed with the board against a contractor within 90 days after the board*
2 *receives notice of the first claim against the contractor exceed the amount of the bond available for*
3 *those claims, the bond shall be apportioned as the board determines, subject to the priorities established*
4 *under this section.]*

5 *[(e) If the total amounts due as a result of claims filed with the board within 90 days after the first*
6 *claim is filed do not exceed the amount of the bond available for those claims, all amounts due as a*
7 *result of claims filed within the 90-day period shall have priority over all claims subsequently filed*
8 *until the amount of the bond available for the payment of claims is exhausted.]*

9 [(5)] (3) Notwithstanding [subsection (4) of this section] **sections 10 and 11 of this 2007 Act**, a
10 bond is not subject to payment for a claim that is filed more than 14 months after the earlier of:

11 (a) The expiration or cancellation date of the license that was in force when the work that is
12 the subject of the claim was completed or abandoned; or

13 (b) The date that the surety canceled the bond.

14 [(6) *The total amount paid from any one bond for costs, interest and attorney fees may not exceed*
15 *\$3,000.*]

16 **SECTION 34.** ORS 701.205 is amended to read:

17 701.205. (1) The Construction Contractors Board is established, consisting of nine members ap-
18 pointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three
19 of the members shall be **residential** contractors who primarily work on residential or small com-
20 mercial structures, including one contractor engaged in the business of remodeling, two shall be
21 public members and one shall be an elected representative of a governing body of local government.
22 Two of the members shall be **commercial** general contractors who primarily work on large com-
23 mercial structures, and one shall be a **commercial** specialty contractor who primarily works on
24 large commercial structures or a **residential** limited contractor. One member who is a contractor
25 may be certified as a home inspector.

26 (2) The term of office of each member is four years, but a member serves at the pleasure of the
27 Governor. Before the expiration of the term of a member, the Governor shall appoint a successor
28 whose term begins on July 1 next following. A member is eligible for reappointment. If there is a
29 vacancy for any cause, the Governor shall make an appointment immediately effective for the un-
30 expired term.

31 (3) In order to be eligible for board membership, the six contractor members of the board shall
32 be licensed under this chapter and shall maintain their licenses in good order during their term of
33 office.

34 **SECTION 35.** ORS 701.230 is amended to read:

35 701.230. At least once each month, the Construction Contractors Board shall provide to inves-
36 tigative units of the Department of Revenue, Department of Consumer and Business Services and
37 Employment Department the name and address of each person who acts as a contractor in violation
38 of this chapter or who knowingly assists an unlicensed person **or a licensed contractor that is**
39 **not properly endorsed** to act in violation of this chapter.

40 **SECTION 36.** ORS 701.235 is amended to read:

41 701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions
42 of this chapter including, but not limited to, rules that:

43 (a) Establish language for surety bonds;

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

45 (c) Limit whether a claim may be processed by the board if there is no direct contractual re-

1 lationship between the claimant and the contractor;

2 (d) [Notwithstanding ORS 701.146 (7) and 701.150 (4) and subject to ORS 701.150 (6)] **Subject to**
3 **sections 10 and 11 of this 2007 Act**, exclude or limit recovery from the contractor's bond required
4 by ORS 701.085, of damages awarded by a court or arbitrator for interest, service charges, costs and
5 attorney fees arising from filing and proving the claim; and

6 (e) Designate a form to be used by an owner of residential property under ORS 87.007 for the
7 purpose of indicating the method the owner has selected to comply with the requirements of ORS
8 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

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

12 **SECTION 37.** ORS 701.990 is amended to read:

13 701.990. (1) Violation of [ORS 701.055 (1)] **section 2 of this 2007 Act** is a Class A misdemeanor.

14 (2) The intentional use of a contractor's license number without the authorization of the licensed
15 contractor is a Class A misdemeanor.

16 (3) Use of a contractor's license number, with or without the authorization of the licensed con-
17 tractor, with the intent to deceive the public is a Class A misdemeanor.

18 **SECTION 38.** ORS 701.992 is amended to read:

19 701.992. (1) Except as provided in subsections (4) and (5) of this section, any person who violates
20 any provision of this chapter or any rule adopted by the Construction Contractors Board shall for-
21 feit and pay into the General Fund of the State Treasury a civil penalty in an amount determined
22 by the board of not more than \$5,000 for each offense.

23 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

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

26 (4) The board shall impose sanctions for violation of ORS 701.135 [(1)(g)] (1)(h) on both the
27 person to whom the contract is awarded and the person who awards the contract as follows:

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

29 (b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;

30 (c) Suspension of the person's license for six months for a third offense;

31 (d) Suspension of the person's license for three years for a fourth offense; and

32 (e) Revocation of the person's license for a fifth offense.

33 (5) The board may impose a civil penalty not to exceed \$100 for each violation of ORS 87.007
34 (3).

35 **SECTION 39.** ORS 18.635 is amended to read:

36 18.635. (1) A writ of garnishment may be issued only by a person specified in this section.

37 (2) The court administrator may issue a writ pursuant to ORS 18.638 and 18.640 only:

38 (a) For the enforcement of a judgment that requires the payment of money and that has been
39 entered in the register of a circuit court or docketed in the docket of a justice or municipal court;

40 (b) Pursuant to an order for provisional process under ORCP 83 and 84; or

41 (c) On behalf of a claimant under an order recorded pursuant to ORS 671.707 or [701.150] **sec-**
42 **tion 10 of this 2007 Act**, if the claimant has complied with the requirements of ORS 205.126.

43 (3) An attorney who is an active member of the Oregon State Bar may issue a writ for the
44 purpose of enforcing:

45 (a) A judgment that requires payment of money and that has been entered in the register of a

1 circuit court of this state or docketed in the docket of a justice or municipal court of this state; and

2 (b) An order or warrant that an agency has recorded in the County Clerk Lien Record as au-
3 thorized by law, including any order that has been recorded pursuant to ORS 671.707 or [701.150]
4 **section 10 of this 2007 Act.**

5 (4) The administrator, as defined in ORS 25.010, may issue writs of garnishment only for the
6 collection of past due support. Writs issued under this subsection are subject to the provisions of
7 ORS 18.645.

8 **SECTION 40.** ORS 18.800 is amended to read:

9 18.800. (1) Except as provided in this section, the provisions of ORS 18.600 to 18.850 apply to
10 all writs of garnishment issued on behalf of agencies for the enforcement of agency orders or war-
11 rants that are recorded in the County Clerk Lien Record.

12 (2) Notwithstanding ORS 18.690, a garnishee who receives a writ of garnishment described in
13 subsection (1) of this section need not deliver a copy of the garnishee response to the court admin-
14 istrator for the court identified as having authority over the writ.

15 (3) Notwithstanding ORS 18.700, a debtor who wishes to make a challenge to a writ of
16 garnishment described in subsection (1) of this section must deliver the challenge in person or by
17 first class mail to the garnishor within the time specified by ORS 18.700 (2).

18 (4) A person issuing a writ of garnishment described in subsection (1) of this section shall modify
19 the forms provided in ORS 18.600 to 18.850 to reflect that:

20 (a) The writ of garnishment is issued pursuant to an order or warrant recorded in the County
21 Clerk Lien Record;

22 (b) A copy of the garnishee response need not be delivered or mailed to the court administrator
23 for the court identified in the writ; and

24 (c) A challenge to a writ of garnishment described in subsection (1) of this section must be de-
25 livered to the garnishor and not to the court.

26 (5) Within 14 days after receipt of a challenge to a garnishment described in subsection (1) of
27 this section, the garnishor must either:

28 (a) Release all property claimed as exempt from or not subject to garnishment under the chal-
29 lenge to the garnishment; or

30 (b) File with the court administrator a response to the challenge attaching copies of the writ
31 and garnishee response and any supporting documentation necessary or helpful to the court in
32 making its determination on the challenge to the garnishment.

33 (6) The provisions of this section do not apply to writs of garnishment issued by the court ad-
34 ministrator, writs issued by an attorney for the enforcement of an order recorded under ORS 671.707
35 or [701.150] **section 10 of this 2007 Act** or writs issued by the administrator, as defined in ORS
36 25.010, under ORS 18.645.

37 **SECTION 41.** ORS 205.126 is amended to read:

38 205.126. (1) At any time after recording an order or warrant in the County Clerk Lien Record,
39 a claimant or an attorney for an agency or claimant may file in the circuit court for the county
40 where the order or warrant is recorded, a copy of the original order or warrant certified by the
41 agency to be a true copy of original, and an affidavit of the claimant or attorney verifying that the
42 order or warrant was recorded in the County Clerk Lien Record for that county, the date that the
43 order or warrant was recorded and the date on which any notice of renewal was recorded under
44 subsection (2) of this section. Subject to any other requirements that may apply to the enforcement
45 remedy sought by the agency or claimant, proceedings may thereafter be commenced by the agency

1 or claimant for the enforcement of the order or warrant, in the same manner as provided for the
2 enforcement of judgments issued by a court. Enforcement proceedings may include:

3 (a) Writ of execution proceedings under ORS 18.252 to 18.993.

4 (b) Proceedings in support of execution under ORS 18.265, 18.268 and 18.270.

5 (c) Garnishment proceedings under ORS 18.600 to 18.850.

6 (2) At any time within 10 years after the recording of an order or warrant, an agency or
7 claimant, acting with or without the assistance of an attorney, may renew an order or warrant by
8 recording a notice of renewal in the County Clerk Lien Record. A notice of renewal recorded within
9 the time specified by this subsection has the attributes and effect of an extension of judgment rem-
10 edies noted in the register under ORS 18.182, from the date that the notice is recorded. A notice
11 of renewal recorded under this section must state:

12 (a) The name of the agency that issued the warrant or order or the name of the claimant in
13 whose favor an order of the Construction Contractors Board or State Landscape Contractors Board
14 has been given;

15 (b) The name of all persons against whom a monetary obligation is imposed under the order or
16 warrant; and

17 (c) The date of recording and the recording number, the book and page number for the record-
18 ing, or the volume and page number for the recording.

19 (3) For the purposes of this section:

20 (a) "Agency" means any state officer, board, commission, corporation, institution, department
21 or other state body that has authority to record an order or warrant in the County Clerk Lien Re-
22 cord.

23 (b) "Claimant" means a person in favor of which a board order has been recorded under the
24 provisions of ORS 671.707 or [701.150] **section 10 of this 2007 Act.**

25 **SECTION 42.** ORS 279C.375 is amended to read:

26 279C.375. (1) After bids are opened and a determination is made that a public improvement
27 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible
28 bidder.

29 (2) At least seven days before the award of a public improvement contract, unless the con-
30 tracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,
31 the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of
32 the contracting agency's intent to award a contract. This subsection does not apply to a contract
33 excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) or (d) or (6). The notice
34 and its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

35 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-
36 lowing:

37 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders
38 who are not qualified to hold a public improvement contract.

39 (b) Determine whether the bidder has met the standards of responsibility. In making the deter-
40 mination, the contracting agency shall consider whether a bidder has:

41 (A) Available the appropriate financial, material, equipment, facility and personnel resources
42 and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual
43 responsibilities.

44 (B) A satisfactory record of performance. The contracting agency shall document the record of
45 performance of a bidder if the contracting agency finds the bidder not to be responsible under this

1 subparagraph.

2 (C) A satisfactory record of integrity. The contracting agency shall document the record of in-
3 tegrity of a bidder if the contracting agency finds the bidder not to be responsible under this sub-
4 paragraph.

5 (D) Qualified legally to contract with the contracting agency.

6 (E) Supplied all necessary information in connection with the inquiry concerning responsibility.
7 If a bidder fails to promptly supply information requested by the contracting agency concerning re-
8 sponsibility, the contracting agency shall base the determination of responsibility upon any available
9 information, or may find the bidder not to be responsible.

10 (c) Document the contracting agency's compliance with the requirements of paragraphs (a) and
11 (b) of this subsection in substantially the following form:

12 _____

13

14 RESPONSIBILITY DETERMINATION FORM

15 Project Name: _____

16 Bid Number: _____

17 Business Entity Name: _____

18 CCB License Number: _____

19 Form Submitted By (Contracting Agency): _____

20 Form Submitted By (Contracting Agency Representative's Name): _____

21 Title: _____

22 Date: _____

23 (The contracting agency must submit this form with attachments, if any, to the Construction
24 Contractors Board within 30 days after the date of contract award.)

25 The contracting agency has (check all of the following):

26 [] Checked the list created by the
27 Construction Contractors Board
28 under ORS 701.227 for bidders who
29 are not qualified to hold a public
30 improvement contract.

31 [] Determined whether the bidder has
32 met the standards of responsibility.
33 In so doing, the contracting agency
34 has considered whether the bidder:

35 [] Has available the appropriate
36 financial, material, equipment,
37 facility and personnel resources
38 and expertise, or the ability to
39 obtain the resources and expertise,
40 necessary to meet all contractual
41 responsibilities.

42 [] Has a satisfactory record of
43 performance.

44 [] Has a satisfactory record of
45 integrity.

- 1 [] Is qualified legally to contract with
2 the contracting agency.
3 [] Has supplied all necessary
4 information in connection with the
5 inquiry concerning responsibility.
6 [] Determined the bidder to be
7 (check one of the following):
8 [] Responsible under ORS 279C.375
9 (3)(a) and (b).
10 [] Not responsible under ORS 279C.375
11 (3)(a) and (b).
12 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
13
-

14
15 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
16 Construction Contractors Board within 30 days after the date the contracting agency awards the
17 contract.

18 (4) The successful bidder shall:

19 (a) Promptly execute a formal contract; and

20 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when
21 required under ORS 279C.380.

22 **(5) A contracting agency may not exclude a commercial contractor from competing for**
23 **a public contract on the basis that the license issued by the Construction Contractors Board**
24 **is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor”**
25 **has the meaning given that term in ORS 701.005.**

26 **SECTION 43.** ORS 279C.375, as amended by section 18, chapter 103, Oregon Laws 2005, is
27 amended to read:

28 279C.375. (1) After bids are opened and a determination is made that a public improvement
29 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible
30 bidder.

31 (2) At least seven days before the award of a public improvement contract, unless the con-
32 tracting agency determines that seven days is impractical under rules adopted under ORS 279A.065,
33 the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of
34 the contracting agency’s intent to award a contract. This subsection does not apply to a contract
35 excepted or exempted from competitive bidding under ORS 279C.335 (1)(c) or (6). The notice and its
36 manner of posting or issuance must conform to rules adopted under ORS 279A.065.

37 (3) In determining the lowest responsible bidder, a contracting agency shall do all of the fol-
38 lowing:

39 (a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders
40 who are not qualified to hold a public improvement contract.

41 (b) Determine whether the bidder has met the standards of responsibility. In making the deter-
42 mination, the contracting agency shall consider whether a bidder has:

43 (A) Available the appropriate financial, material, equipment, facility and personnel resources
44 and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual
45 responsibilities.

1 (B) A satisfactory record of performance. The contracting agency shall document the record of
2 performance of a bidder if the contracting agency finds the bidder not to be responsible under this
3 subparagraph.

4 (C) A satisfactory record of integrity. The contracting agency shall document the record of in-
5 tegrity of a bidder if the contracting agency finds the bidder not to be responsible under this sub-
6 paragraph.

7 (D) Qualified legally to contract with the contracting agency.

8 (E) Supplied all necessary information in connection with the inquiry concerning responsibility.
9 If a bidder fails to promptly supply information requested by the contracting agency concerning re-
10 sponsibility, the contracting agency shall base the determination of responsibility upon any available
11 information, or may find the bidder not to be responsible.

12 (c) Document the contracting agency’s compliance with the requirements of paragraphs (a) and
13 (b) of this subsection in substantially the following form:

14 _____
15
16 RESPONSIBILITY DETERMINATION FORM

17 Project Name: _____

18 Bid Number: _____

19 Business Entity Name: _____

20 CCB License Number: _____

21 Form Submitted By (Contracting Agency): _____

22 Form Submitted By (Contracting Agency Representative’s Name): _____

23 Title: _____

24 Date: _____

25 (The contracting agency must submit this form with attachments, if any, to the Construction
26 Contractors Board within 30 days after the date of contract award.)

27 The contracting agency has (check all of the following):

28 [] Checked the list created by the
29 Construction Contractors Board
30 under ORS 701.227 for bidders who
31 are not qualified to hold a public
32 improvement contract.

33 [] Determined whether the bidder has
34 met the standards of responsibility.
35 In so doing, the contracting agency
36 has considered whether the bidder:

37 [] Has available the appropriate
38 financial, material, equipment,
39 facility and personnel resources
40 and expertise, or the ability to
41 obtain the resources and expertise,
42 necessary to meet all contractual
43 responsibilities.

44 [] Has a satisfactory record of
45 performance.

- 1 Has a satisfactory record of
- 2 integrity.
- 3 Is qualified legally to contract with
- 4 the contracting agency.
- 5 Has supplied all necessary
- 6 information in connection with the
- 7 inquiry concerning responsibility.
- 8 Determined the bidder to be
- 9 (check one of the following):
- 10 Responsible under ORS 279C.375
- 11 (3)(a) and (b).
- 12 Not responsible under ORS 279C.375
- 13 (3)(a) and (b).
- 14 (Attach documentation if the contracting agency finds the bidder not to be responsible.)

16

17 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the

18 Construction Contractors Board within 30 days after the date the contracting agency awards the

19 contract.

- 20 (4) The successful bidder shall:
- 21 (a) Promptly execute a formal contract; and
 - 22 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when
 - 23 required under ORS 279C.380.

24 **(5) A contracting agency may not exclude a commercial contractor from competing for**

25 **a public contract on the basis that the license issued by the Construction Contractors Board**

26 **is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor”**

27 **has the meaning given that term in ORS 701.005.**

28 **SECTION 44.** ORS 279C.465 is amended to read:

29 279C.465. (1) Any person that loses a competitive bid or proposal for a contract involving the

30 construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation,

31 replacement or renovation of a building or structure may bring an action for damages against an-

32 other person who is awarded the contract for which the bid or proposal was made if the person

33 making the losing bid or proposal can establish that the other person knowingly violated ORS

34 279C.840, 656.017, 657.505 or 701.055 **or section 2 of this 2007 Act** while performing the work under

35 the contract, or knowingly failed to pay to the Department of Revenue all sums withheld from em-

36 ployees under ORS 316.167.

37 (2) A person bringing an action under this section must establish a violation of ORS 279C.840,

38 316.167, 656.017, 657.505 or 701.055 **or section 2 of this 2007 Act** by a preponderance of the evi-

39 dence.

40 (3) Upon establishing that the violation occurred, the person shall recover, as liquidated dam-

41 ages, 10 percent of the total amount of the contract or \$5,000, whichever is greater.

42 (4) In any action under this section, the prevailing party is entitled to an award of reasonable

43 attorney fees.

44 (5) An action under this section must be commenced within two years of the substantial com-

45 pletion of the construction, repair, remodeling, alteration, conversion, modernization, improvement,

1 rehabilitation, replacement or renovation. For the purposes of this subsection, “substantial com-
2 pletion” has the meaning given that term in ORS 12.135.

3 (6) A person may not recover any amounts under this section if the defendant in the action es-
4 tablishes by a preponderance of the evidence that the plaintiff:

5 (a) Was in violation of ORS 701.055 **or section 2 of this 2007 Act** at the time of making the
6 bid or proposal on the contract;

7 (b) Was in violation of ORS 316.167, 656.017 or 657.505 with respect to any employees of the
8 plaintiff as of the time of making the bid or proposal on the contract; or

9 (c) Was in violation of ORS 279C.840 with respect to any contract performed by the plaintiff
10 within one year before making the bid or proposal on the contract at issue in the action.

11 **SECTION 45.** ORS 279C.585 is amended to read:

12 279C.585. A contractor whose bid is accepted may substitute a first-tier subcontractor that was
13 not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason
14 for the substitution in writing to the contracting agency. A contractor may substitute a first-tier
15 subcontractor under this section in the following circumstances:

16 (1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written
17 contract after having had a reasonable opportunity to do so after the written contract, which must
18 be reasonably based upon the general terms, conditions, plans and specifications for the public im-
19 provement project or the terms of the subcontractor’s written bid, is presented to the subcontractor
20 by the contractor.

21 (2) When the disclosed subcontractor becomes bankrupt or insolvent.

22 (3) When the disclosed subcontractor fails or refuses to perform the subcontract.

23 (4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the
24 contractor that had been identified prior to the bid submittal.

25 (5) When the contractor demonstrates to the contracting agency that the subcontractor was
26 disclosed as the result of an inadvertent clerical error.

27 (6) When the disclosed subcontractor does not hold a license from, **or has a license that is**
28 **not properly endorsed by**, the Construction Contractors Board and is required to be licensed by
29 the board.

30 (7) When the contractor determines that the work performed by the disclosed subcontractor is
31 substantially unsatisfactory and not in substantial accordance with the plans and specifications or
32 that the subcontractor is substantially delaying or disrupting the progress of the work.

33 (8) When the disclosed subcontractor is ineligible to work on a public improvement contract
34 under applicable statutory provisions.

35 (9) When the substitution is for good cause. The Construction Contractors Board shall define
36 “good cause” by rule. “Good cause” includes but is not limited to the financial instability of a sub-
37 contractor. The definition of “good cause” must reflect the least-cost policy for public improvements
38 established in ORS 279C.305.

39 (10) When the substitution is reasonably based on the contract alternates chosen by the con-
40 tracting agency.

41 **SECTION 46.** ORS 479.940 is amended to read:

42 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following
43 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise
44 Residential Dwelling Code:

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

- 1 (b) Garage door openers;
- 2 (c) Vacuum systems;
- 3 (d) Audio and stereo systems;
- 4 (e) HVAC;
- 5 (f) Landscape sprinkler controls;
- 6 (g) Landscape lighting; and
- 7 (h) Doorbells.

8 (2) The provisions of subsection (1) of this section apply only to *[persons or businesses licensed*
9 *and in good standing with]* **residential contractors holding a current license and proper**
10 **endorsement issued by** the Construction Contractors Board.

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

14 (b) A business exempt from licensing under this section shall issue an identification card to its
15 landscape irrigation control wiring or outdoor landscape lighting installer. The form for the iden-
16 tification card shall be provided by the State Landscape Contractors Board. The identification card
17 shall include the name of the installer, the name and State Landscape Contractors Board identifi-
18 cation number of the landscaping business and the date of issue of the identification card. The card
19 shall be carried by the installer at the job site when performing the allowed electric installations.

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

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

29 **SECTION 47.** ORS 646.551 is amended to read:

30 646.551. As used in ORS 646.551 to 646.557, unless the context requires otherwise:

31 (1) "Telephonic seller" means a person who, on the person's own behalf, or on behalf of another
32 person, causes or attempts to cause a telephone solicitation to be made under the following cir-
33 cumstances:

34 (a) The person initiates telephonic contact with a prospective purchaser and represents or im-
35 plies any of the following:

36 (A) That a prospective purchaser who buys one or more goods or services unit will receive ad-
37 ditional units, whether or not of the same type as purchased, without further cost. As used in this
38 subparagraph, "further cost" does not include actual postage or common carrier delivery charges,
39 if any;

40 (B) That a prospective purchaser will receive a prize or gift if the person also encourages the
41 prospective purchaser to do either of the following:

42 (i) Purchase or rent any goods or services; or

43 (ii) Pay any money, including, but not limited to a delivery or handling charge;

44 (C) That a prospective purchaser who buys goods or services, because of some unusual event
45 or imminent price increase, will be able to buy these items at prices which are below those usually

1 charged or will be charged for those items;

2 (D) That the seller is a person other than the actual seller;

3 (E) That the items for sale or rent are manufactured or supplied by a person other than the
4 actual manufacturer or supplier; or

5 (F) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires
6 or other precious stones or any interest in oil, gas or mineral fields, wells or exploration sites; or

7 (b) The telephone solicitation is made by the person in response to inquiries from prospective
8 purchasers generated by advertisement, on behalf of the person and the solicitation is conducted as
9 described in paragraph (a) of this subsection.

10 (2) "Telephonic seller" does not include any of the following:

11 (a) A person selling a security as defined in ORS 59.015, or securities which are exempt under
12 ORS 59.025.

13 (b) A person licensed pursuant to ORS chapter 696 when the transaction is governed by that
14 chapter.

15 (c) A person licensed pursuant to [ORS 701.055] **section 2 of this 2007 Act** when the solicited
16 transaction is governed by ORS chapter 701.

17 (d) A person licensed pursuant to ORS chapter 744 when the solicited transaction is governed
18 by the Insurance Code.

19 (e) A person soliciting the sale of a franchise when the solicited transaction is governed by ORS
20 650.005 to 650.100.

21 (f) A person primarily soliciting the sale of a subscription to or advertising in a newspaper of
22 general circulation.

23 (g) A person primarily soliciting the sale of a magazine or periodical, or contractual plans, in-
24 cluding book or record clubs:

25 (A) Under which the seller provides the consumer with a form which the consumer may use to
26 instruct the seller not to ship the offered merchandise, and which is regulated by the Federal Trade
27 Commission trade regulation concerning "Use of Negative Option Plans by Sellers in Commerce";
28 or

29 (B) Using arrangements such as continuity plans, subscription arrangements, standing order ar-
30 rangements, supplements and series arrangements under which the seller periodically ships mer-
31 chandise to a consumer who has consented in advance to receive such merchandise on a periodic
32 basis.

33 (h) A person soliciting business from prospective purchasers who have previously purchased
34 from the business enterprise for which the person is calling.

35 (i) A person soliciting without the intent to complete and who does not complete the sales
36 presentation during the telephone solicitation and who only completes the sale presentation at a
37 later face-to-face meeting between the solicitor and the prospective purchaser, unless at that later
38 meeting the solicitor collects or attempts to collect payment for delivery of items purchased.

39 (j) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this
40 paragraph, "supervised financial institution" means any financial institution or trust company, as
41 those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender,
42 commercial finance lender or insurer that is subject to regulation by an official or agency of this
43 state or the United States.

44 (k) A person soliciting the sale of funeral or burial services regulated by ORS 59.670 and 59.680
45 or by ORS chapter 692.

1 (L) A person soliciting the sale of services provided by a cable television system operating under
2 authority of a franchise or permit issued by a governmental agency of this state, or subdivision
3 thereof.

4 (m) A person or affiliate of a person whose business is regulated by the Public Utility Commis-
5 sion, or a telecommunications utility with access lines of 15,000 or less or a cooperative telephone
6 association.

7 (n) A person soliciting the sale of a farm product, as defined in ORS 79.0102, if the solicitation
8 does not result in a sale which costs the purchaser in excess of \$100.

9 (o) An issuer or a subsidiary of an issuer that has a class of securities that is subject to section
10 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
11 under paragraph (A), (B), (C), (E), (F), (G) or (H) of subsection (g) of that section.

12 (p) A person soliciting exclusively the sale of telephone answering services to be provided by
13 that person or that person's employer.

14 (q) A person registered under the Charitable Solicitations Act.

15 **SECTION 48.** ORS 656.021 is amended to read:

16 656.021. Notwithstanding ORS 656.029 (1), a person who is licensed pursuant to **an application**
17 **under** ORS 701.075 and is acting under a contract to perform work described by ORS chapter 701
18 shall be considered the subject employer for all individuals employed by that person.

19 **SECTION 49.** ORS 656.027 is amended to read:

20 656.027. All workers are subject to this chapter except those nonsubject workers described in
21 the following subsections:

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

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

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

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

29 or

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

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

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

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

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

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

45 (b) Sole proprietors actively registered under ORS 671.525 or licensed under [ORS 701.035]

1 **section 2 of this 2007 Act.** When labor or services are performed under contract for remuneration,
2 notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor.
3 Any sole proprietor registered under ORS 671.525 or licensed under [ORS 701.035] **section 2 of this**
4 **2007 Act** and involved in activities subject thereto is conclusively presumed to be an independent
5 contractor.

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

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

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

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

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

29 (A) Two corporate officers; or

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

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

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

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

36 (13) A person who has been declared an amateur athlete under the rules of the United States
37 Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for
38 performance of services as an athlete other than board, room, rent, housing, lodging or other rea-
39 sonable incidental subsistence allowance, or any amateur sports official who is certified by a re-
40 cognized Oregon or national certifying authority, which requires or provides liability and accident
41 insurance for such officials. A roster of recognized Oregon and national certifying authorities will
42 be maintained by the Department of Consumer and Business Services, from lists of certifying or-
43 ganizations submitted by the Oregon School Activities Association and the Oregon Park and Re-
44 creation Society.

45 (14) Volunteer personnel participating in the ACTION programs, organized under the Domestic

1 Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the
2 Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimburse-
3 ment for time and travel expenses.

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

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

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

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

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

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

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

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

21 (19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411,
22 418, 430 or 443.

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

26 (21) A person performing services under a property tax work-off program established under ORS
27 310.800.

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

31 (23)(a) Partners who are actively registered under ORS 671.525 or licensed under [ORS
32 701.035] **section 2 of this 2007 Act** and who have a substantial ownership interest in a partnership.
33 If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters
34 or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsub-
35 ject workers. For all other partnerships registered under ORS 671.510 to 671.710 or licensed under
36 [ORS chapter 701] **section 2 of this 2007 Act**, the maximum number of exempt partners shall be
37 whichever is the greater of the following:

38 (A) Two partners; or

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

40 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
41 656.005 (30), the partnership qualifies as an independent contractor. Any partnership registered un-
42 der ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and involved in activ-
43 ities subject thereto is conclusively presumed to be an independent contractor.

44 (24)(a) Corporate officers who are directors of a corporation actively registered under ORS
45 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and who have a substantial

1 ownership interest in the corporation, regardless of the nature of the work performed. If all officers
2 of the corporation are members of the same family and are parents, spouses, sisters, brothers,
3 daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to
4 be nonsubject workers. For all other corporations registered under ORS 671.510 to 671.710 or li-
5 censed under [ORS chapter 701] **section 2 of this 2007 Act**, the maximum number of exempt cor-
6 porate officers shall be whichever is the greater of the following:

7 (A) Two corporate officers; or

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

9 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
10 656.005 (30), the corporation qualifies as an independent contractor. Any corporation registered un-
11 der ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and involved in activ-
12 ities subject thereto is conclusively presumed to be an independent contractor.

13 (25)(a) Limited liability company members who are members of a company actively registered
14 under ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and who have a
15 substantial ownership interest in the company, regardless of the nature of the work performed. If
16 all members of the company are members of the same family and are parents, spouses, sisters,
17 brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may
18 elect to be nonsubject workers. For all other companies registered under ORS 671.510 to 671.710 or
19 licensed under [ORS chapter 701] **section 2 of this 2007 Act**, the maximum number of exempt
20 company members shall be whichever is the greater of the following:

21 (A) Two company members; or

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

23 (b) When labor or services are performed under contract for remuneration, notwithstanding ORS
24 656.005 (30), the company qualifies as an independent contractor. Any company registered under
25 ORS 671.525 or licensed under [ORS 701.035] **section 2 of this 2007 Act** and involved in activities
26 subject thereto is conclusively presumed to be an independent contractor.

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

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

31 **SECTION 50.** ORS 671.540 is amended to read:

32 671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (15) An employee of a licensed landscaping business when performing work for the business
39 under the direct supervision of a licensed landscape contractor.

40 (16) An employee of a worker leasing company or temporary service provider, both as defined
41 in ORS 656.850, when performing work for a licensed landscaping business under the direct super-
42 vision of a licensed landscape contractor.

43 **SECTION 51. ORS 701.058 and 701.252 are repealed.**

44 **SECTION 52. (1) Sections 3 to 6, 8 and 10 to 12 of this 2007 Act, the amendments to ORS**
45 **18.635, 18.800, 205.126, 279C.375, 656.021, 701.005, 701.010, 701.055, 701.060, 701.072, 701.075,**

1 701.078, 701.085, 701.105, 701.138, 701.139, 701.140, 701.145, 701.146, 701.148, 701.150, 701.205 and
2 701.235 by sections 13, 14, 16, 17, 19 to 24, 27 to 34, 36, 39 to 43 and 48 of this 2007 Act and the
3 repeal of ORS 701.058 and 701.252 by section 51 of this 2007 Act become operative July 1, 2008.

4 (2) Sections 3, 4 and 8 of this 2007 Act and the amendments to ORS 656.021, 701.060,
5 701.075, 701.085 and 701.105 by sections 17, 20, 22 to 24 and 48 of this 2007 Act apply to licenses
6 issued or renewed on or after July 1, 2008.

7 (3) Sections 10 and 11 of this 2007 Act and the amendments to ORS 18.635, 18.800, 205.126,
8 701.139, 701.140, 701.145, 701.146, 701.150 and 701.235 by sections 28 to 31, 33, 36 and 39 to 41
9 of this 2007 Act apply to claims filed against persons whose contractor licenses are issued
10 or renewed on or after July 1, 2008.

11 (4) Sections 2 and 9 of this 2007 Act, the amendments to section 6 of this 2007 Act by
12 section 7 of this 2007 Act and the amendments to ORS 279C.465, 279C.585, 479.940, 646.551,
13 656.027, 671.540, 701.035, 701.055, 701.065, 701.115, 701.135, 701.230, 701.990 and 701.992 by
14 sections 15, 16a, 18, 25, 26, 35, 37, 38, 44 to 47, 49 and 50 of this 2007 Act become operative
15 July 1, 2010.

16 (5) The amendments to ORS 701.205 by section 34 of this 2007 Act do not affect the term
17 of office served by any member of the Construction Contractors Board appointed to a term
18 beginning before July 1, 2009. For appointments to terms beginning on or after July 1, 2009,
19 the Governor shall appoint members to achieve the board composition described in ORS
20 701.205 as amended by section 34 of this 2007 Act no later than July 1, 2013.

21 (6) The Construction Contractors Board may take all necessary actions prior to the op-
22 erative dates specified in this section for the efficient administration and enforcement of this
23 2007 Act.

24