

House Bill 3242

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 **as introduced**.

Creates categories and levels of construction contractor licensing. Creates new experience, continuing education, bonding and insurance provisions for categories and levels of construction contractor. Modifies claim and recovery provisions. Imposes workers' compensation insurance requirement on certain contractors otherwise qualifying as exempt.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to construction contractors; creating new provisions; amending ORS 279C.375, 279C.585,
3 479.940, 671.540, 701.005, 701.010, 701.035, 701.055, 701.060, 701.065, 701.072, 701.075, 701.078,
4 701.085, 701.105, 701.115, 701.135, 701.138, 701.139, 701.140, 701.145, 701.146, 701.148, 701.150,
5 701.205, 701.230, 701.235 and 701.250; and declaring an emergency.

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

7 **SECTION 1. Sections 2 to 5 of this 2007 Act are added to and made a part of ORS chapter**
8 **701.**

9 **SECTION 2. (1) The Construction Contractors Board may license a person as a level I**
10 **general commercial contractor if the person meets the experience requirements in section**
11 **3 (1)(a) of this 2007 Act, the continuing education requirements in section 4 (1) of this 2007**
12 **Act, the bonding requirements in ORS 701.085 (2) and the insurance requirements in ORS**
13 **701.105 (1)(a).**

14 **(2) The board may license a person as a level II general commercial contractor if the**
15 **person meets the experience requirements in section 3 (1)(b) of this 2007 Act, the continuing**
16 **education requirements in section 4 (2) of this 2007 Act, the bonding requirements in ORS**
17 **701.085 (4) and the insurance requirements in ORS 701.105 (1)(b).**

18 **(3) The board may license a person as a level I specialty commercial contractor if the**
19 **person meets the experience requirements in section 3 (1)(a) of this 2007 Act, the continuing**
20 **education requirements in section 4 (1) of this 2007 Act, the bonding requirements in ORS**
21 **701.085 (3) and the insurance requirements in ORS 701.105 (1)(b).**

22 **(4) The board may license a person as a level II specialty commercial contractor if the**
23 **person meets the experience requirements in section 3 (1)(b) of this 2007 Act, the continuing**
24 **education requirements in section 4 (2) of this 2007 Act, the bonding requirements in ORS**
25 **701.085 (4) and the insurance requirements in ORS 701.105 (1)(f).**

26 **SECTION 3. (1) In addition the information required under ORS 701.075, an applicant for**
27 **a general commercial contractor license or specialty commercial contractor license shall**
28 **provide certification of experience as follows:**

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) For a level I license, that the responsible managing individual for the licensee, as
2 defined in ORS 701.078, has at least eight years of construction experience as a journeyman,
3 foreperson, supervising employee, licensed contractor or licensed developer.

4 (b) For a level II license, that the responsible managing individual for the licensee, as
5 defined in ORS 701.078, has at least four years of construction experience as a journeyman,
6 foreperson, supervising employee, licensed contractor or licensed developer.

7 (2) An applicant may substitute education or apprenticeship for construction experience
8 under subsection (1) of this section as follows:

9 (a) A certificate of completion from an apprenticeship program or a bachelor's degree in
10 a construction-related field may substitute for up to three years of experience;

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

13 (c) An associate's degree in construction or in building management may substitute for
14 up to one year of experience.

15 **SECTION 4.** (1) A level I general commercial contractor or level I specialty commercial
16 contractor shall complete the equivalent of at least 40 hours of continuing education per
17 year.

18 (2) A level II general commercial contractor or a level II specialty commercial contractor
19 shall complete the equivalent of at least 16 hours of continuing education per year.

20 (3) Notwithstanding subsections (1) and (2) of this section, if a commercial contractor
21 has not more than four key employees, the contractor may satisfy continuing education re-
22 quirements by completing the equivalent of eight hours of continuing education per key
23 employee per year.

24 (4) Continuing education topics shall relate to construction means, methods or business
25 practices. Contractors may obtain continuing education hours from post-secondary insti-
26 tutions, trade schools, trade associations, professional societies and private companies.
27 Contractors that provide in-house training programs covering the required topics may use
28 the training program hours to satisfy continuing education requirements.

29 (5) To renew a commercial contractor license, the contractor shall certify at the time
30 of renewal the number of continuing education hours completed during the expiring licensing
31 period. The contractor shall maintain records verifying completion of continuing education
32 requirements.

33 (6) This section does not apply to a commercial contractor that is subject to regulation
34 under ORS 446.003 to 446.200 and 446.225 to 446.285.

35 **SECTION 5.** A general commercial contractor that builds a new large commercial
36 structure shall provide the owner with a two-year warranty against defect in materials and
37 workmanship for the building envelope and penetration components. The contractor shall
38 provide annual inspections of the building envelope during the warranty. The warranty need
39 not cover any condition resulting from improper maintenance by the owner.

40 **SECTION 6.** ORS 701.005 is amended to read:

41 701.005. As used in this chapter:

42 (1) "Board" means the Construction Contractors Board.

43 (2) "Construction debt" means an amount owed under:

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

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

1 **(3) “Commercial contractor” means a contractor that:**

2 **(a) Does not perform work on residential structures; and**

3 **(b) Is licensed as a level I or II general commercial contractor or a level I or II specialty**
 4 **commercial contractor.**

5 [(3)] **(4) “Contractor”** means a person who, for compensation or with the intent to sell, arranges
 6 or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract
 7 from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad,
 8 excavation or other structure, project, development or improvement attached to real estate or to
 9 do any part thereof. [*“Contractor” includes general contractors, residential-only contractors and spe-*
 10 *cialty contractors as defined in this section.*]

11 **(5) “Dual licensee” means a contractor that is licensed as both a commercial and resi-**
 12 **dential contractor.**

13 [(4)] **(6) “General contractor”:**

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

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

20 **(7) “General commercial contractor” means a general contractor that does not perform**
 21 **work on residential structures.**

22 **(8) “General residential contractor” means a general contractor that does not perform**
 23 **work on large commercial structures.**

24 [(5)] **(9) “Home inspector”** means a person who, for a fee, inspects and provides written reports
 25 on the overall physical condition of a residential structure and the appurtenances thereto. “Home
 26 inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or
 27 altered structures for compliance with the state building code.

28 [(6)] **(10) “Inspector”** means a contractor registered with the board who inspects or otherwise
 29 provides services to a property owner or other contractor but does not substantively add to or
 30 subtract from a structure. “Inspector” includes but is not limited to a home inspector certified under
 31 ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection in-
 32 spector and backflow assembly tester certified under ORS 448.279. “Inspector” does not include city
 33 or county inspectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

34 **(11) “Key employee” means an employee or owner of a commercial contractor who is a**
 35 **corporate officer, engineer, manager, superintendent, foreperson or leadperson, or is an**
 36 **employee identified by the board by rule as a key employee.**

37 [(7)] **(12) “Large commercial structure”** means a structure that is not a residential structure or
 38 small commercial structure.

39 [(8)] **(13) “Licensed developer”** means a contractor who owns property or an interest in property
 40 and arranges for construction work, if the contractor:

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

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

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

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

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

[(10)] (15) “Residential-only contractor” means:

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

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

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

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

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

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

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

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

(19) “**Specialty commercial contractor**” means a specialty contractor that does not perform work on residential structures.

(20) “**Specialty residential contractor**” means a specialty contractor that does not perform work on large commercial structures.

SECTION 7. ORS 701.010 is amended to read:

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

- 1 (1) A person who is constructing, altering, improving or repairing personal property.
- 2 (2) A person who is constructing, altering, improving or repairing a structure located within the
3 boundaries of any site or reservation under the jurisdiction of the federal government.
- 4 (3) A person who furnishes materials, supplies, equipment or finished product and does not fab-
5 ricate them into, or consume them, in the performance of the work of a contractor.
- 6 (4) A person working on one structure or project, under one or more contracts, when the ag-
7 gregate price of all of that person's contracts for labor, materials and all other items is less than
8 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
9 to a person who advertises or puts out any sign or card or other device that might indicate to the
10 public that the person is a contractor.
- 11 (5) An owner who contracts for work to be performed by a licensed contractor. This subsection
12 does not apply to a person who, in the pursuit of an independent business, constructs, remodels,
13 repairs or for compensation and with the intent to sell the structure, arranges to have constructed,
14 remodeled or repaired a structure with the intent of offering the structure for sale before, upon or
15 after completion. It is prima facie evidence that there was an intent of offering the structure for sale
16 if the person who constructed, remodeled or repaired the structure or arranged to have the struc-
17 ture constructed, remodeled or repaired does not occupy the structure after its completion.
- 18 (6) A person performing work on a property that person owns or performing work as the owner's
19 employee, whether the property is occupied by the owner or not, or a person performing work on
20 that person's residence, whether or not that person owns the residence. This subsection does not
21 apply to a person performing work on a structure owned by that person or the owner's employee if
22 the work is performed, in the pursuit of an independent business, with the intent of offering the
23 structure for sale before, upon or after completion.
- 24 (7) A person licensed in one of the following trades or professions when operating within the
25 scope of that license:
 - 26 (a) An architect licensed by the State Board of Architect Examiners.
 - 27 (b) A registered professional engineer licensed by the State Board of Examiners for Engineering
28 and Land Surveying.
 - 29 (c) A water well contractor licensed by the Water Resources Department.
 - 30 (d) A sewage disposal system installer licensed by the Department of Environmental Quality.
 - 31 (e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks,
32 arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets the appli-
33 cable bonding requirements under ORS 671.690.
 - 34 (f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood
35 destroying organisms for the transfer of real estate.
 - 36 (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered
37 under ORS chapter 674 by the Appraiser Certification and Licensure Board.
- 38 (8) A person who performs work subject to this chapter as an employee of a contractor.
- 39 (9) A manufacturer of a manufactured home constructed under standards established by the
40 federal government.
- 41 (10) A person involved in the movement of:
 - 42 (a) Modular buildings or structures other than manufactured structures not in excess of 14 feet
43 in width.
 - 44 (b) Structures not in excess of 16 feet in width when the structures are being moved by their
45 owner if the owner is not a contractor required to be licensed under this chapter.

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

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

8 (13) Units of government other than those specified in ORS 701.005 [(10)(b) and (c)] **(15)(c) and**
 9 **(d).**

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

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

15 **SECTION 8.** ORS 701.035 is amended to read:

16 701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
 17 eligible for a license with the Construction Contractors Board.

18 (2) The board shall establish two classes of independent contractor licenses:

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

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

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

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

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

33 (4) The decision of the board that a person is an independent contractor applies only when the
 34 person is performing work of the nature described in ORS 701.055 and 701.060.

35 **(5) A person that otherwise qualifies for exemption but is licensed or attempting to be-**
 36 **come licensed as a general commercial contractor must procure and maintain personal**
 37 **election workers’ compensation insurance.**

38 **SECTION 9.** ORS 701.055 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 **in the correct category for the work to be performed.** A partnership, corporation or joint
 42 venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless
 43 that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint
 44 venture is licensed for the purpose of offering to undertake work as a contractor on a structure if
 45 any of the partners or joint venturers whose name appears in the business name of the partnership

1 or joint venture is licensed under this chapter.

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

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

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

20 _____

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

24 (b) I own, reside in or will reside in the completed dwelling. My general **residential** contractor
25 is _____, Construction Contractors Board license no. _____, license expiration
26 date _____. I will instruct my general **residential** contractor that all subcontractors who
27 work on this dwelling must be licensed **as specialty residential contractors** with the Construction
28 Contractors Board; or

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

31 (d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcon-
32 tractors licensed **as specialty residential contractors** with the Construction Contractors Board.

33 (e) If I change my mind and do hire a general **residential** contractor, I will contract with a
34 general **residential** contractor who is licensed with the Construction Contractors Board and I will
35 immediately notify the office issuing this building permit of the name of the general **residential**
36 contractor _____.

37 _____

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

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

1 (b) Workers' compensation insurance on workers.

2 (c) Liability and property damage insurance.

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

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

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

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

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

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

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

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

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

28 (A) Names and addresses.

29 (B) License numbers.

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

32 (12) A contractor may not hire any subcontractor or other contractor to perform work unless
33 the subcontractor or contractor is licensed **in the appropriate category** under this chapter or ex-
34 empt from licensure under ORS 701.010.

35 (13) **The board shall prepare and provide at no cost to all licensed general residential and**
36 **specialty residential contractors** a consumer notification form designed to specifically inform [a]
37 property [owner] **owners** what the property [owner] **owners** should do to protect themselves in [a]
38 residential repair, remodel or construction **projects** [*project shall be prepared by the board and*
39 *provided at no cost to all licensed contractors*]. [*The*] **A** contractor shall deliver the form to the
40 property owner when the contractor submits a bid or proposal for work on a residential structure.
41 The form shall include an explanation of the meaning of licensure, including a statement that
42 licensure is not an endorsement of a contractor's work, and an explanation of the bond and insur-
43 ance levels required of contractors for the benefit of property owners. The form must not be larger
44 than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce
45 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 10.** ORS 701.060 is amended to read:

10 701.060. (1) **The Construction Contractors Board may issue more than one contractor li-**
 11 **cence to the same person. A person licensed as described in this subsection is a dual licensee.**
 12 **A dual licensee is subject to all requirements of this chapter for each category for which the**
 13 **person is licensed.**

14 [(1)] (2) Any contractor licensed under this chapter may at any time apply for a license in an-
 15 other category. The [*Construction Contractors*] board may charge a transfer fee not to exceed \$20 for
 16 each additional license.

17 [(2)] (3) If a contractor applies for a license pursuant to subsection [(1)] (2) of this section all
 18 construction, alteration, improvement, moving over public highways, roads or streets, demolition or
 19 repair performed by that contractor on buildings of all types shall be subject to the provisions of
 20 this chapter and to regulation by the board. Such licensure shall be exclusive as provided in ORS
 21 701.055 (10).

22 **SECTION 11.** ORS 701.065 is amended to read:

23 701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a
 24 claim of a construction lien, or commence a claim with the Construction Contractors Board, in ar-
 25 bitration or in any court of this state for compensation for the performance of any work or for the
 26 breach of any contract for work that is subject to this chapter, unless the contractor had a valid
 27 license **for the category of work performed or to be performed** issued by the board:

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

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

32 (a) The contractor either did not have [a] **an appropriate** valid license at any time required
 33 under subsection (1) of this section, or had an initial issuance thereof, and:

34 (A) The contractor was not aware of the requirement that the contractor be licensed **or to be**
 35 **licensed in the appropriate category**, and the contractor submitted a completed application for a
 36 license **in the appropriate category** within a number of days established by the board, but not more
 37 than 90 days, of the date the contractor became aware of the requirement;

38 (B) At the time the contractor perfected a claim of a construction lien or commenced any other
 39 claim subject to the provisions of subsection (1) of this section, the contractor was licensed **in the**
 40 **appropriate category** by the board; and

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

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

45 (A) The contractor was not aware of the lapse in the license for more than a number of days

1 established by the board, but not to exceed 90 days, before submitting a completed application for
 2 license renewal with the board;

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

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

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

13 (B) The licensed developer was unaware of the license requirement and obtained [a] **an appro-**
 14 **priate** license within a time established by the board, not to exceed 90 days after the licensed de-
 15 veloper learned of the requirement;

16 (C) The licensed developer was licensed at the time the licensed developer perfected the lien
 17 or commenced the claim; and

18 (D) Enforcement of subsection (1) of this section would result in substantial injustice to the li-
 19 censed developer; or

20 (d) The claim:

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

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

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

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

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

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

33 **SECTION 12.** ORS 701.072 is amended to read:

34 701.072. (1) The Construction Contractors Board, by rule, shall impose training requirements for
 35 individuals and businesses seeking to be licensed under this chapter. The training required by the
 36 board must relate to business practices and laws affecting construction contractors. The board shall
 37 adopt standards for programs that provide training that meets the requirements of this subsection.

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

1 subsection (1) of this section.

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

5 (4) Subsections (1) and (3) of this section do not apply to an applicant for licensing as a licensed
 6 developer **or to a licensed contractor applying to become a dual licensee.**

7 **SECTION 13.** ORS 701.075 is amended to read:

8 701.075. (1) An applicant for a construction contractor license must submit the application on
 9 a form prescribed by the Construction Contractors Board. The application shall include, but not be
 10 limited to, the following information regarding the applicant:

11 (a) **The** classification, **category and level** of the license being sought.

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

15 (c) Social Security number.

16 (d) Workers’ compensation insurance account number, if the applicant is required to have
 17 workers’ compensation insurance.

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

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

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

24 (h) The name and address of:

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

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

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

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

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

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

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

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

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

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

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

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

45 (E) Each member of a member-managed limited liability company that is a partner, joint

1 venturer or member of the applicant.

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

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

5 (H) Each individual who has a controlling ownership interest in, or management authority over,
6 the applicant and who meets criteria adopted by the board by rule.

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

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

11 (a) Is in compliance with ORS 701.078.

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

13 (3) Subsection (2)(a) of this section does not apply to a licensed developer.

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

16 **SECTION 14.** ORS 701.078 is amended to read:

17 701.078. (1) As used in this section, “responsible managing individual” means an individual who:

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

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

21 (b)(A) Has successfully completed the training and testing required for licensing under ORS
22 701.072 within a period identified by the Construction Contractors Board by rule;

23 (B) Has demonstrated experience required by the board by rule **or, if a key employee of a**
24 **commercial contractor, as provided in section 3 of this 2007 Act;** or

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

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

28 (3) Subsection (2) of this section does not apply to a licensed developer.

29 **SECTION 15.** ORS 701.085 is amended to read:

30 701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the
31 Construction Contractors Board a surety bond with one or more corporate sureties authorized to
32 do business in this state in the amount set forth in subsections (2) to [(5)] (9) of this section. The
33 surety bond must provide that the applicant, with regard to work subject to this chapter, will pay
34 claims ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this subsection
35 shall remain in effect for at least one year or until depleted by claims paid under ORS 701.150, un-
36 less the surety sooner cancels the bond. At the discretion of the surety the bond may be continued
37 for an additional period by continuation certificate. Except as provided in subsection [(6)] (10) of this
38 section, the aggregate liability of the surety under the bond for claims against the bond may not
39 exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided
40 in subsection [(6)] (10) of this section, an extension by continuation certificate, reinstatement, reis-
41 sue or renewal of the bond may not increase the liability of the surety.

42 (2) **A level I general commercial contractor shall obtain a surety bond in the amount of**
43 **\$75,000.**

44 (3) **A level I specialty commercial contractor shall obtain a surety bond in the amount**
45 **of \$50,000.**

1 **(4) A level II general commercial contractor or a level II specialty commercial contractor**
2 **shall obtain a surety bond in the amount of \$25,000.**

3 [(2)] **(5)** A general **residential** contractor or a licensed developer shall obtain a surety bond in
4 the amount of \$15,000.

5 [(3)] **(6)** A specialty **residential** contractor shall obtain a surety bond in the amount of \$10,000.

6 **(7) A dual licensee shall obtain a separate bond in the required amount for each of the**
7 **categories for which the person is licensed.**

8 [(4)] **(8)** An inspector shall obtain a surety bond in the amount of \$10,000.

9 [(5)] **(9)** The board may reduce the amount of the surety bond required by this section to \$5,000
10 for a contractor upon a showing that the contractor does not perform work as a contractor ex-
11 ceeding \$40,000 in gross annual volume, [and] does not enter into contracts that exceed \$5,000 **and**
12 **does not work on large commercial structures.** The board shall designate the contractor as a
13 limited contractor.

14 [(6)] **(10)** The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to
15 a board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the
16 bond of the licensee. The new surety bond must be in the amount set forth in subsections (2) to
17 [(5)] **(9)** of this section unless a higher amount is required by a board condition or rule described in
18 subsection [(7) or (8)] **(11) or (12)** of this section. The board may allow a licensee to obtain, instead
19 of a new bond, a certification that the surety remains liable for the full penal sum of the bond,
20 notwithstanding payment by the surety on the claim.

21 [(7)] **(11)** If the amount the licensee must pay against the bond under this section exceeds the
22 amount of the bond, the board shall suspend the contractor's license until the amount owed is paid.
23 The board, as a condition of ending the suspension, may require a contractor requesting rein-
24 statement of a license to file a bond of an amount up to five times as much as the amount required
25 ordinarily of a licensee under this section.

26 [(8)] **(12)** The board by rule may establish conditions for applicants or persons licensed under
27 this chapter under which the applicant or licensee must file a bond of an amount up to five times
28 as much as the amount required ordinarily of an applicant or licensee under this section. The board
29 may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfac-
30 tory completion of approved elective classes on dispute resolution and prevention, basic accounting
31 and record keeping or such other classes as the board may prescribe.

32 [(9)] **(13)** The bond required under this section is for the exclusive purpose of payment of final
33 orders and arbitration awards of the board in accordance with this chapter.

34 [(10)] **(14)** Upon determination under ORS 701.145 or 701.146 of a claim against a contractor who
35 holds a bond required under this section, the board shall notify the surety on the bond of the final
36 order in a manner determined by the board by rule. The notification shall include a list of all claims
37 upon which a final order has been issued.

38 [(11)] **(15)** A suit or action may not be commenced against a surety on a bond required under
39 this section until 30 days after the date that the surety is notified by the board under ORS 701.150
40 that payment is due on the claim.

41 [(12)] **(16)** In any action against a surety on a bond under this section that is based on the
42 failure of the surety to pay a claim or on the denial of a claim by the surety, the court may award:

43 (a) Costs;

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

45 (c) Twice the amount of any damages that the board ordered the surety to pay on the claim, if

1 the surety arbitrarily and capriciously refused to pay upon order of the board.

2 **SECTION 16.** ORS 701.105 is amended to read:

3 701.105. (1) Except as provided in subsection (2) of this section, a contractor who possesses a
 4 license as required under this chapter shall have in effect public liability, personal injury and
 5 property damage insurance covering the work of the contractor that is subject to this chapter, for
 6 an amount not less than:

7 **(a) \$2 million for a level I general commercial contractor.**

8 **(b) \$1 million for a level II general commercial contractor or a level I specialty com-**
 9 **mercial contractor.**

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

11 **(d) \$300,000 for a specialty residential contractor.**

12 [(b)] **(e) \$300,000 for a residential-only [specialty] contractor not described in paragraph (c)**
 13 **or (d) of this subsection.**

14 [(c)] **(f) \$500,000 for [all other specialty contractors] a level II specialty commercial**
 15 **contractor.**

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

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

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

26 (3) A residential-only contractor who provides a board-approved alternative form of security
 27 under subsection (2) of this section is considered for purposes of this chapter to have obtained in-
 28 surance described in subsection (1) of this section. This subsection does not subject to regulation
 29 as an insurer a person who issues all or part of an alternative form of security, unless the alterna-
 30 tive form of security otherwise qualifies as an insurance product.

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

34 **SECTION 17.** ORS 701.105, as amended by section 2, chapter 766, Oregon Laws 2003, is
 35 amended to read:

36 701.105. (1) A contractor who possesses a license as required under this chapter shall have in
 37 effect public liability, personal injury and property damage insurance covering the work of the
 38 contractor that is subject to this chapter, for an amount not less than:

39 **(a) \$2 million for a level I general commercial contractor.**

40 **(b) \$1 million for a level II general commercial contractor or a level I specialty com-**
 41 **mercial contractor.**

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

43 **(d) \$300,000 for a specialty residential contractor.**

44 [(b)] **(e) \$300,000 for a residential-only [specialty] contractor not described in paragraph (c)**
 45 **or (d) of this subsection.**

1 [(c)] (f) \$500,000 for [all other specialty contractors] a level II specialty commercial
 2 contractor.

3 [(d)] (g) \$100,000 for a limited contractor.

4 [(e)] (h) \$300,000 for an inspector.

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

8 **SECTION 18.** ORS 701.115 is amended to read:

9 701.115. (1) A license is valid for two years from the date of issuance unless the license is re-
 10 voked or suspended as set forth in ORS 701.135.

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

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

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

22 (5) A contractor may convert a license to inactive status if the contractor is not engaged in
 23 work as a contractor. A contractor having an inactive license is subject to board licensing re-
 24 quirements and application fees, but is not subject to the bonding requirement of ORS 701.085 or the
 25 insurance requirement of ORS 701.105. **A commercial contractor having an inactive license is**
 26 **not subject to the continuing education requirements of section 4 of this 2007 Act.** An inactive
 27 license is not considered a valid license for purposes of offering to undertake construction work,
 28 submitting a bid for construction work, obtaining a building permit or performing construction work.
 29 A license may not be placed or maintained in inactive status more than once during any two-year
 30 licensing term.

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

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

34 701.135. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or re-
 35 issue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board
 36 determines after notice and opportunity for hearing:

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

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

39 (c) That the licensee has knowingly assisted an unlicensed **or improperly licensed** person to
 40 act in violation of this chapter.

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

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

45 (f) That the licensee has worked without a construction permit where a permit is required and

1 the work resulted in a claim being filed with the board. For purposes of this paragraph, “con-
2 struction permit” includes a building permit, electrical permit, mechanical permit or plumbing per-
3 mit.

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

- 7 (A) Two sole proprietors;
- 8 (B) One partnership;
- 9 (C) One corporation; or
- 10 (D) One limited liability company.

11 (h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been con-
12 victed of one of the following crimes:

- 13 (A) Murder;
- 14 (B) Assault in the first degree;
- 15 (C) Kidnapping;
- 16 (D) Rape, sodomy or unlawful sexual penetration;
- 17 (E) Sexual abuse;
- 18 (F) Arson in the first degree;
- 19 (G) Robbery in the first degree;
- 20 (H) Theft in the first degree; or
- 21 (I) Theft by extortion.

22 (i) That the licensee or applicant has not, within 90 days after the date when payment was re-
23 ceived from the public contracting agency, or contractor in the case of a subcontractor, made pay-
24 ment to any person for supplying labor or materials contracted for with a public contract for a
25 public improvement plus the amount of interest due.

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

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

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

- 34 (A) Lack of a surety bond required by ORS 701.085;
- 35 (B) Lack of liability insurance required by ORS 701.105;
- 36 (C) Hiring employees while licensed as exempt under ORS 701.035; or
- 37 (D) Conduct as a construction contractor that is dishonest or fraudulent.

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

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

7 (4) A certified copy of the record of conviction shall be conclusive evidence of a conviction un-
 8 der subsection (1)(h) of this section.

9 (5) If the board suspends or revokes the license of an individual contractor or contractor busi-
 10 ness for a violation of subsection (1)(g) of this section, the board may not restore or reissue the li-
 11 cense unless the individual contractor or a responsible managing individual, as defined in ORS
 12 701.078, for the contractor business has successfully completed the training and testing described in
 13 ORS 701.072.

14 **SECTION 20.** ORS 701.138 is amended to read:

15 701.138. (1) Every person offering to undertake or undertaking construction of building sewer
 16 piping shall comply with the requirements of ORS chapter 701.

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

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

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

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

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

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

27 **SECTION 21.** ORS 701.139 is amended to read:

28 701.139. Except as provided in ORS 701.148 (2), the Construction Contractors Board may resolve
 29 a dispute against a licensed contractor only if a claim is made against the contractor's surety bond
 30 required by ORS 701.085. In order to have access to the bond, a person must file a claim of a type
 31 described in ORS 701.140 within the applicable time limitation described in ORS 701.143. **If a con-**
 32 **tractor is a dual licensee, the person may file a claim only against the bond of the contractor**
 33 **that is applicable to the type of work involved.** The claim must be filed and resolved as follows:

34 (1) A claim that involves work on a residential structure or an appurtenance to the structure
 35 must be resolved as provided under ORS 701.145.

36 (2) A claim **against a residential contractor** that involves work on a small commercial struc-
 37 ture or an appurtenance [thereto] **to the structure** may be resolved as provided in ORS 701.145 or
 38 701.146. **Except as provided in subsection (5) of this section, a claim against a commercial**
 39 **contractor that involves work on a small commercial structure or an appurtenance to the**
 40 **structure must be resolved as provided in ORS 701.146.**

41 (3) Except as provided in subsections (4) and (5) of this section, a claim that involves work on
 42 a large commercial structure or an appurtenance thereto must be resolved as provided in ORS
 43 701.146.

44 (4) A claim by an owner that involves work on a large commercial structure or an appurtenance
 45 thereto when the total contract involved in the claim is \$25,000 or less may be resolved as provided

1 in ORS 701.145 or 701.146.

2 (5) Notwithstanding subsections (1) to (4) of this section, with prior agreement of the claimant
 3 and the licensed contractor, a claim may be resolved by the board through binding arbitration under
 4 ORS 701.148.

5 **SECTION 22.** ORS 701.140 is amended to read:

6 701.140. A claim made against a licensed contractor’s bond required by ORS 701.085 must arise
 7 from the performance, or a contract for the performance, of work that is subject to this chapter.
 8 The claim must be of one or more of the following types:

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

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

14 (2) A claim against a contractor by the owner of a structure or other real property to discharge,
 15 or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075
 16 to 87.093 under circumstances described under this subsection. If the claim is processed under ORS
 17 701.145, the Construction Contractors Board may reduce a claim by any amount the claimant owes
 18 the contractor. The board shall process claims described in this subsection under ORS 701.145 only
 19 if:

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

21 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to
 22 87.093 because the contractor failed to pay the person claiming the lien for that person’s contribu-
 23 tion toward completion of the improvement[.]; **and**

24 **(c) The claim is not made by or against a commercial contractor for work performed on**
 25 **a large commercial structure.**

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

- 27 (a) Negligent work;
- 28 (b) Improper work; or
- 29 (c) Breach of contract.

30 (4) A claim by a person furnishing labor to a contractor.

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

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

35 **SECTION 23.** ORS 701.145 is amended to read:

36 701.145. *[For a claim described in ORS 701.139 (1) involving work on a residential structure or*
 37 *an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial*
 38 *structure or an appurtenance thereto that is not resolved under ORS 701.146 or an owner’s claim de-*
 39 *scribed in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto*
 40 *that is not resolved under ORS 701.146:]* **For a claim described in ORS 701.139 (1), a claim de-**
 41 **scribed in ORS 701.139 (2) involving work by a residential contractor that is not resolved**
 42 **under ORS 701.146 or a claim described in ORS 701.139 (4) that is not resolved under ORS**
 43 **701.146:**

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

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

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

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

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

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

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

16 (c) The amount in controversy is less than an amount adopted by the board and not more than
17 \$250.

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

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

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

30 (b) Refer the matter for hearing.

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

33 **SECTION 24.** ORS 701.146 is amended to read:

34 701.146. *[For a claim described in ORS 701.139 (3) involving work on a large commercial structure*
35 *or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commer-*
36 *cial structure or an appurtenance thereto that is not resolved under ORS 701.145 or an owner's claim*
37 *described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance*
38 *thereto that is not resolved under ORS 701.145:]* **For a claim described in ORS 701.139 (3) or a**
39 **claim described in ORS 701.139 (2) or (4) that is not resolved under ORS 701.145:**

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

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

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

45 (2) The claimant must file the claim with the Construction Contractors Board by delivering to

1 the board a copy of the complaint or the demand for arbitration or other document necessary to
 2 initiate arbitration. The complaint, demand or other document must be accompanied by a statement
 3 of claim in a form prescribed by board rule. The claimant must also give notice to the surety on the
 4 bond by delivering to the surety a copy of the complaint, demand for arbitration or other document
 5 necessary to initiate arbitration and a copy of the statement of claim. Delivery to the board and
 6 the surety must be accomplished by certified mail, return receipt requested, no later than the earlier
 7 of:

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

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

10 (c) The 30th day before:

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

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

13 (3) Filing the claim with the board under subsection (2) of this section constitutes filing the
 14 claim for purposes of establishing timeliness of the claim under ORS 701.143 and priority of the
 15 claim under ORS 701.150.

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

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

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

39 (7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection
 40 (6) of this section, the board shall issue a proposed order in the amount of the judgment together
 41 with any costs, interest and attorney fees awarded under the judgment, to the extent that the
 42 judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination
 43 of the claim is limited to whether the claim comes within the jurisdiction of the board and is subject
 44 to payment by the surety. The board shall issue the proposed order in a form that indicates the
 45 surety's maximum liability to the claimant. If a hearing is not requested within the time set forth

1 in the proposed order, the proposed order becomes final without any further action by the board.
 2 If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section,
 3 the board may determine:

- 4 (a) Whether the claim was timely filed with the board as provided in ORS 701.143.
- 5 (b) Whether the surety received timely notice as provided in subsections (2) and (6) of this sec-
 6 tion.
- 7 (c) Whether the claim is for work subject to this chapter.
- 8 (d) The extent of the surety's liability to the claimant.

9 **SECTION 25.** ORS 701.148 is amended to read:

10 701.148. (1) Subject to subsection (4) of this section, if the resolution of a claim under ORS
 11 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be
 12 conducted as a binding arbitration under rules adopted by the board under subsection (3) of this
 13 section. This subsection does not authorize the board to require binding arbitration of a claim that
 14 is subject to ORS 701.146.

15 (2) The board may use mediation or arbitration to resolve a construction dispute between any
 16 parties who agree to follow the rules of the board, *[including but not limited to parties to a claim that*
 17 *is subject to ORS 701.146]* **unless the dispute between the parties is of a type that must be**
 18 **resolved under ORS 701.146.**

19 (3) Except as provided in this subsection, rules adopted by the board to regulate arbitration
 20 under subsections (1) and (2) of this section must substantially conform with the provisions of ORS
 21 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.
 22 The rules may:

- 23 (a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a
 24 petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;
- 25 (b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;
- 26 (c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be
 27 submitted in a form specified by the rule;
- 28 (d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time
 29 than provided by ORS 36.705 and 36.710; and
- 30 (e) Include any other provision necessary to conform the arbitration to this chapter.

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

- 35 (a) If the party requests to have a claim resolved through a contested case hearing, the party
 36 must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to
 37 the board and to all parties entitled by board rule to receive a copy of the request.
- 38 (b) If the party files a complaint in court, the party must, within the time specified in paragraph
 39 (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by
 40 board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the
 41 claimant must allege all elements of the claim in the complaint. If the complaint is filed by the
 42 contractor against whom a claim is alleged, the complaint may be a complaint for damages, a com-
 43 plaint for declaratory judgment or other complaint that allows the claimant to file a response al-
 44 leging the elements of the claim. The claimant has the burden of proving the elements of the claim
 45 in any action described in this paragraph.

1 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
 2 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
 3 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
 4 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
 5 tration.

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

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

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

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

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

18 **SECTION 26.** ORS 701.150 is amended to read:

19 701.150. (1) If a Construction Contractors Board final order is not paid by the contractor, the
 20 board shall notify the surety on the bond. The surety may not pay a claim until the surety receives
 21 notice from the board that the claim is ready for payment.

22 (2) If an order of the board that determines a claim under ORS 701.145 becomes final by opera-
 23 tion of law or on appeal and remains unpaid 10 days after the date the order becomes final, the
 24 claimant may file the order with the county clerk in any county of this state.

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

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

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

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

41 (c) If payments involving [*residential and*] small commercial structures do not exhaust the bond,
 42 board orders and notice involving large commercial structure claims are satisfied in the following
 43 priority[, *except that the total amount paid from any one bond to nonowner claimants may not exceed*
 44 *\$3,000*]:

45 (A) Labor, including employee benefits.

1 (B) All other claims involving large commercial structures except costs, interest and attorney
 2 fees.

3 (C) Any costs, interest and attorney fees the plaintiff may be entitled to recover.

4 (d) If the total claims filed with the board against a contractor within 90 days after the board
 5 receives notice of the first claim against the contractor exceed the amount of the bond available for
 6 those claims, the bond shall be apportioned as the board determines, subject to the priorities es-
 7 tablished under this section.

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

12 **(5) If a claim is made against a dual licensee for work on a residential or small com-**
 13 **mercial structure and is resolved under ORS 701.145, the claim is payable only from the**
 14 **smaller of the bonds described in ORS 701.085 (2) to (5) held by the dual licensee.**

15 **(6) If a claim is made against a dual licensee for work on a small commercial structure**
 16 **and is resolved under ORS 701.146, the claim is payable only from the larger of the bonds**
 17 **described in ORS 701.085 (2) to (5) held by the dual licensee.**

18 [(5)] (7) Notwithstanding subsection (4) of this section, a bond is not subject to payment for a
 19 claim that is filed more than 14 months after the earlier of:

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

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

23 [(6)] (8) **If a claim involves a residential structure, or if a claim involves work on a small**
 24 **commercial structure by a residential contractor and is resolved under ORS 701.145,** the total
 25 amount paid from any one bond for costs, interest and attorney fees may not exceed \$3,000.

26 **SECTION 27.** ORS 701.205 is amended to read:

27 701.205. (1) The Construction Contractors Board is established, consisting of nine members ap-
 28 pointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three
 29 of the members shall be contractors who primarily work on residential or small commercial struc-
 30 tures, including one contractor engaged in the business of remodeling, two shall be public members
 31 and one shall be an elected representative of a governing body of local government. Two of the
 32 members shall be general **commercial** contractors who primarily work on large commercial struc-
 33 tures, and one shall be a specialty **commercial** contractor who primarily works on large commercial
 34 structures or a limited contractor. One member who is a contractor may be certified as a home in-
 35 spector.

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

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

44 **SECTION 28.** ORS 701.230 is amended to read:

45 701.230. At least once each month, the Construction Contractors Board shall provide to inves-

1 tigative units of the Department of Revenue, Department of Consumer and Business Services and
 2 Employment Department the name and address of each person who acts as a contractor in violation
 3 of this chapter or who knowingly assists an unlicensed **or improperly licensed** person to act in
 4 violation of this chapter.

5 **SECTION 29.** ORS 701.235 is amended to read:

6 701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions
 7 of this chapter including, but not limited to, rules that:

8 (a) Establish language for surety bonds;

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

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

12 (d) Notwithstanding ORS 701.146 (7) and 701.150 (4) and subject to ORS 701.150 [(6)] (8), exclude
 13 or limit recovery from the contractor's bond required by ORS 701.085, of damages awarded by a
 14 court or arbitrator for interest, service charges, costs and attorney fees arising from filing and
 15 proving the claim; and

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

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

22 **SECTION 30.** ORS 701.250 is amended to read:

23 701.250. (1) Any individual may request and the Construction Contractors Board shall provide
 24 notification of the status of one or more licensees. Status information provided by the board shall
 25 include **category, level and** any professional credentials earned by the contractor as described in
 26 ORS 701.120.

27 (2) The board may charge a standard fee for the notification described in subsection (1) of this
 28 section not to exceed the cost of preparation and provision of such notices.

29 **SECTION 31.** ORS 279C.375 is amended to read:

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

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

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

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

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

45 (A) Available the appropriate financial, material, equipment, facility and personnel resources

1 and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual
2 responsibilities.

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

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

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

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

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

16 _____

17
18 **RESPONSIBILITY DETERMINATION FORM**

19 Project Name: _____

20 Bid Number: _____

21 Business Entity Name: _____

22 CCB License Number: _____

23 Form Submitted By (Contracting Agency): _____

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

25 Title: _____

26 Date: _____

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

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

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

35 Determined whether the bidder has
36 met the standards of responsibility.
37 In so doing, the contracting agency
38 has considered whether the bidder:

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

- 1 Has a satisfactory record of
- 2 performance.
- 3 Has a satisfactory record of
- 4 integrity.
- 5 Is qualified legally to contract with
- 6 the contracting agency.
- 7 Has supplied all necessary
- 8 information in connection with the
- 9 inquiry concerning responsibility.

10 Determined the bidder to be
 11 (check one of the following):

- 12 Responsible under ORS 279C.375
- 13 (3)(a) and (b).
- 14 Not responsible under ORS 279C.375
- 15 (3)(a) and (b).

16 (Attach documentation if the contracting agency finds the bidder not to be responsible.)

18
 19 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
 20 Construction Contractors Board within 30 days after the date the contracting agency awards the
 21 contract.

22 (4) The successful bidder shall:

- 23 (a) Promptly execute a formal contract; and
- 24 (b) Execute and deliver to the contracting agency a performance bond and a payment bond when
 25 required under ORS 279C.380.

26 **(5) A public agency may not use the Construction Contractors Board license category of**
 27 **a general commercial contractor or specialty commercial contractor as the basis for ex-**
 28 **cluding the contractor from competing for a public contract.**

29 **SECTION 32.** ORS 279C.375, as amended by section 18, chapter 103, Oregon Laws 2005, is
 30 amended to read:

31 279C.375. (1) After bids are opened and a determination is made that a public improvement
 32 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible
 33 bidder.

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

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

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

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

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

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

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

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

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

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

17 _____

18
19 RESPONSIBILITY DETERMINATION FORM

20 Project Name: _____

21 Bid Number: _____

22 Business Entity Name: _____

23 CCB License Number: _____

24 Form Submitted By (Contracting Agency): _____

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

26 Title: _____

27 Date: _____

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

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

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

36 [] Determined whether the bidder has
37 met the standards of responsibility.
38 In so doing, the contracting agency
39 has considered whether the bidder:

40 [] Has available the appropriate
41 financial, material, equipment,
42 facility and personnel resources
43 and expertise, or the ability to
44 obtain the resources and expertise,
45 necessary to meet all contractual

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

18
19

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

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

27 **(5) A public agency may not use the Construction Contractors Board license category of**
28 **a general commercial contractor or specialty commercial contractor as the basis for ex-**
29 **cluding the contractor from competing for a public contract.**

30 **SECTION 33.** ORS 279C.585 is amended to read:

31 279C.585. A contractor whose bid is accepted may substitute a first-tier subcontractor that was
32 not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason
33 for the substitution in writing to the contracting agency. A contractor may substitute a first-tier
34 subcontractor under this section in the following circumstances:

- 35 (1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written
36 contract after having had a reasonable opportunity to do so after the written contract, which must
37 be reasonably based upon the general terms, conditions, plans and specifications for the public im-
38 provement project or the terms of the subcontractor’s written bid, is presented to the subcontractor
39 by the contractor.
- 40 (2) When the disclosed subcontractor becomes bankrupt or insolvent.
- 41 (3) When the disclosed subcontractor fails or refuses to perform the subcontract.
- 42 (4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the
43 contractor that had been identified prior to the bid submittal.
- 44 (5) When the contractor demonstrates to the contracting agency that the subcontractor was
45 disclosed as the result of an inadvertent clerical error.

1 (6) When the disclosed subcontractor does not hold a license from the Construction Contractors
 2 Board and is required to be licensed by the board **or does not hold the appropriate category of**
 3 **license for the work.**

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

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

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

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

15 **SECTION 34.** ORS 479.940 is amended to read:

16 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following
 17 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise
 18 Residential Dwelling Code:

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

27 (2) The provisions of subsection (1) of this section apply only to *[persons or businesses]* **resi-**
 28 **dential contractors appropriately licensed for the work** and in good standing with the Con-
 29 struction Contractors Board.

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

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

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

43 (5) All nonlicensure requirements of ORS 479.510 to 479.945, including permits for and compli-
 44 ance with the electrical specialty code, apply to activities conducted under subsections (1) to (4) of
 45 this section. If any person or business repeatedly violates the permit or code compliance require-

1 ments, in addition to any other remedy, the Electrical and Elevator Board may suspend, condition
2 or revoke a person's or business's right to use this provision.

3 **SECTION 35.** ORS 671.540 is amended to read:

4 671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **SECTION 36. Nothing in the amendments to ORS 701.205 by section 27 of this 2007 Act**
 17 **shall terminate any term of office being served by a member of the Construction Contractors**
 18 **Board on January 1, 2009.**

19 **SECTION 37. (1) Sections 2 to 5 of this 2007 Act and the amendments to ORS 279C.375,**
 20 **279C.585, 479.940, 671.540, 701.005, 701.010, 701.035, 701.055, 701.060, 701.065, 701.072, 701.075,**
 21 **701.078, 701.085, 701.105, 701.115, 701.135, 701.138, 701.205, 701.230, 701.235 and 701.250 by**
 22 **sections 6 to 20 and 27 to 35 of this 2007 Act become operative January 1, 2009.**

23 **(2) The amendments to ORS 701.139, 701.140, 701.145, 701.146, 701.148 and 701.150 by**
 24 **sections 21 to 26 of this 2007 Act become operative January 1, 2009, and apply to claims**
 25 **arising out of construction contracts entered into on or after January 1, 2009.**

26 **(3) The Construction Contractors Board may take all necessary actions prior to January**
 27 **1, 2009, for the efficient administration and enforcement of sections 2 to 5 of this 2007 Act**
 28 **and the amendments to ORS 279C.375, 279C.585, 479.940, 671.540, 701.005, 701.010, 701.035,**
 29 **701.055, 701.060, 701.065, 701.072, 701.075, 701.078, 701.085, 701.105, 701.115, 701.135, 701.138,**
 30 **701.139, 701.140, 701.145, 701.146, 701.148, 701.150, 701.205, 701.230, 701.235 and 701.250 by**
 31 **sections 6 to 35 of this 2007 Act on or after January 1, 2009.**

32 **(4) Notwithstanding subsection (1) of this section, the board shall adopt rules modifying**
 33 **the application forms for construction contractor licensing and make the modified rules to**
 34 **become effective January 1, 2008. The modified forms shall allow an applicant for a license**
 35 **to indicate the type of license being sought and, if a license as a commercial contractor is**
 36 **being sought, to submit any information that might demonstrate that the applicant has ed-**
 37 **ucation, training, bonding and insurance that would qualify the applicant for licensing on or**
 38 **after January 1, 2009, as a commercial contractor.**

39 **(5) Notwithstanding ORS 701.115, if an application for a commercial contractor license**
 40 **does not contain information demonstrating that the applicant has education, training,**
 41 **bonding and insurance that would qualify the applicant for licensing as a commercial con-**
 42 **tractor on or after January 1, 2009, under sections 2 to 5 of this 2007 Act and ORS 701.005,**
 43 **701.010, 701.035, 701.055, 701.060, 701.065, 701.072, 701.075, 701.078, 701.085, 701.105 and 701.115**
 44 **as amended by sections 6 to 18 of this 2007 Act, the board shall issue a general contractor**
 45 **license that expires January 1, 2009. Notwithstanding subsection (1) of this section, if the**

1 application demonstrates that the applicant has education, training, bonding and insurance
2 that would qualify the applicant for licensing on or after January 1, 2009, under sections 2
3 to 5 of this 2007 Act and ORS 701.005, 701.010, 701.035, 701.055, 701.060, 701.065, 701.072, 701.075,
4 701.078, 701.085, 701.105 and 701.115 as amended by sections 6 to 18 of this 2007 Act, the board
5 may issue the applicant a license designating an appropriate category and level of contractor
6 licensing as indicated by the application information. However, a person issued a license un-
7 der this subsection designating a category and level of commercial contractor licensing may
8 also perform residential construction contractor work prior to January 1, 2009. A person is-
9 sued a license under this subsection designating a category of residential contractor licensing
10 may also perform commercial construction contractor work prior to January 1, 2009.

11 **SECTION 38.** This 2007 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
13 on its passage.

14
