

# Senate Bill 763

Sponsored by COMMITTEE ON RULES

## 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**.

Transfers duties, functions and powers of Construction Contractors Board to Department of Consumer and Business Services.

Makes board policy advisor to Director of Department of Consumer and Business Services.

## A BILL FOR AN ACT

1  
2 Relating to Construction Contractors Board; creating new provisions; and amending ORS 87.007,  
3 87.023, 87.058, 87.093, 183.530, 205.125, 205.126, 279A.010, 279C.365, 279C.375, 279C.400, 279C.440,  
4 279C.515, 279C.585, 279C.590, 279C.600, 279C.830, 279C.836, 448.279, 454.715, 455.125, 455.800,  
5 455.805, 479.940, 479.945, 657.665, 670.304, 670.306, 671.540, 701.005, 701.010, 701.013, 701.035,  
6 701.055, 701.058, 701.060, 701.065, 701.067, 701.072, 701.075, 701.077, 701.078, 701.080, 701.085,  
7 701.102, 701.103, 701.105, 701.115, 701.120, 701.125, 701.130, 701.135, 701.138, 701.139, 701.140,  
8 701.143, 701.145, 701.146, 701.147, 701.148, 701.149, 701.150, 701.160, 701.175, 701.180, 701.205,  
9 701.215, 701.225, 701.227, 701.230, 701.235, 701.240, 701.250, 701.252, 701.255, 701.260, 701.295,  
10 701.350, 701.505, 701.515, 701.525, 701.530, 701.550, 701.565, 701.630 and 701.992.

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

12 **SECTION 1. The duties, functions and powers of the Construction Contractors Board are**  
13 **imposed upon, transferred to and vested in the Department of Consumer and Business Ser-**  
14 **vices.**

15 **SECTION 2. (1) The administrator of the Construction Contractors Board shall:**

16 **(a) Deliver to the Department of Consumer and Business Services all records and prop-**  
17 **erty within the jurisdiction of the administrator that relate to the duties, functions and**  
18 **powers transferred by section 1 of this 2007 Act; and**

19 **(b) Transfer to the Department of Consumer and Business Services those employees en-**  
20 **gaged primarily in the exercise of the duties, functions and powers transferred by section 1**  
21 **of this 2007 Act.**

22 **(2) The Director of the Department of Consumer and Business Services shall take pos-**  
23 **session of the records and property, and shall take charge of the employees and employ them**  
24 **in the exercise of the duties, functions and powers transferred by section 1 of this 2007 Act,**  
25 **without reduction of compensation but subject to change or termination of employment or**  
26 **compensation as provided by law.**

27 **(3) The Governor shall resolve any dispute between the Construction Contractors Board**  
28 **and the Department of Consumer and Business Services relating to transfers of records,**  
29 **property and employees under this section, and the Governor's decision is final.**

30 **SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the**  
31 **Construction Contractors Board for the biennium beginning July 1, 2007, from revenues**

**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 dedicated, continuously appropriated, appropriated or otherwise made available for the pur-  
2 pose of administering and enforcing the duties, functions and powers transferred by section  
3 1 of this 2007 Act are transferred to and are available for expenditure by the Department of  
4 Consumer and Business Services for the biennium beginning July 1, 2007, for the purpose of  
5 administering and enforcing the duties, functions and powers transferred by section 1 of this  
6 2007 Act.

7 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
8 expenditures by the Construction Contractors Board remain applicable to expenditures by  
9 the Department of Consumer and Business Services under this section.

10 **SECTION 4.** The transfer of duties, functions and powers to the Construction Contrac-  
11 tors Board by section 1 of this 2007 Act does not affect any action, proceeding or prosecution  
12 involving or with respect to such duties, functions and powers begun before and pending at  
13 the time of the transfer, except that the Department of Consumer and Business Services is  
14 substituted for the Construction Contractors Board in the action, proceeding or prosecution.

15 **SECTION 5.** (1) Nothing in sections 1 to 7, 16 and 97 of this 2007 Act or the amendments  
16 to statutes by sections 8 to 15 and 17 to 96 of this 2007 Act relieves a person of a liability,  
17 duty or obligation accruing under or with respect to the duties, functions and powers  
18 transferred by section 1 of this 2007 Act. The Department of Consumer and Business Ser-  
19 vices may undertake the collection or enforcement of any such liability, duty or obligation.

20 (2) The rights and obligations of the Construction Contractors Board legally incurred  
21 under contracts, leases and business transactions executed, entered into or begun before the  
22 operative date of section 1 of this 2007 Act accruing under or with respect to the duties,  
23 functions and powers transferred by section 1 of this 2007 Act are transferred to the De-  
24 partment of Consumer and Business Services. For the purpose of succession to these rights  
25 and obligations, the Department of Consumer and Business Services is a continuation of the  
26 Construction Contractors Board and not a new authority.

27 **SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1  
28 of this 2007 Act, the rules of the Construction Contractors Board with respect to such duties,  
29 functions or powers that are in effect on the operative date of section 1 of this 2007 Act  
30 continue in effect until superseded or repealed by rules of the Department of Consumer and  
31 Business Services. References in such rules of the Construction Contractors Board to the  
32 Construction Contractors Board or an officer or employee of the Construction Contractors  
33 Board are considered to be references to the Department of Consumer and Business Services  
34 or an officer or employee of the Department of Consumer and Business Services.

35 **SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
36 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in  
37 the context of the duties, functions and powers transferred by section 1 of this 2007 Act,  
38 reference is made to the Construction Contractors Board, or an officer or employee of the  
39 Construction Contractors Board, whose duties, functions or powers are transferred by sec-  
40 tion 1 of this 2007 Act, the reference is considered to be a reference to the Department of  
41 Consumer and Business Services or an officer or employee of the Department of Consumer  
42 and Business Services who by this 2007 Act is charged with carrying out such duties, func-  
43 tions and powers.

44 **SECTION 8.** ORS 701.005 is amended to read:

45 701.005. As used in this chapter:

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

2 [(2)] (1) “Construction debt” means an amount owed under:

3 (a) A final order or arbitration award issued by the [board] **Department of Consumer and**  
4 **Business Services**; or

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

6 [(3)] (2) “Contractor” means a person who, for compensation or with the intent to sell, arranges  
7 or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract  
8 from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad,  
9 excavation or other structure, project, development or improvement attached to real estate or to  
10 do any part thereof. “Contractor” includes general contractors, residential-only contractors and  
11 specialty contractors as defined in this section.

12 [(4)] (3) “General contractor” means a contractor whose business operations require the use of  
13 more than two unrelated building trades or crafts that the contractor supervises or performs in  
14 whole or part, whenever the sum of all contracts on any single property, including materials and  
15 labor, exceeds an amount established by rule by the [board] **department**. “General contractor” does  
16 not include specialty contractors or limited contractors, as described in ORS 701.085.

17 [(5)] (4) “Home inspector” means a person who, for a fee, inspects and provides written reports  
18 on the overall physical condition of a residential structure and the appurtenances thereto. “Home  
19 inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or  
20 altered structures for compliance with the state building code.

21 [(6)] (5) “Inspector” means a contractor registered with the [board] **department** who inspects  
22 or otherwise provides services to a property owner or other contractor but does not substantively  
23 add to or subtract from a structure. “Inspector” includes but is not limited to a home inspector  
24 certified under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross  
25 connection inspector and backflow assembly tester certified under ORS 448.279. “Inspector” does  
26 not include city or county inspectors acting under ORS 701.225 or an inspector as defined in ORS  
27 455.715.

28 [(7)] (6) “Large commercial structure” means a structure that is not a residential structure or  
29 small commercial structure.

30 [(8)] (7) “Licensed developer” means a contractor who owns property or an interest in property  
31 and arranges for construction work, if the contractor:

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

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

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

38 [(9)] (8) “Officer” means any of the following persons:

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

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

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

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

43 (e) A trustee.

44 (f) A person defined as an officer under [board] **department** rules. The definition of officer  
45 adopted by [board] **department** rule may include persons not listed in this subsection who may ex-

1 ercise substantial control over a business.

2 [(10)] (9) “Residential-only contractor” means a general contractor or specialty contractor who  
 3 performs work exclusively in connection with residential structures and small commercial struc-  
 4 tures, and the appurtenances thereto. “Residential-only contractor” includes, but is not limited to:

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

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

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

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

17 [(11)] (10) “Residential structure” means a residence, including a site-built home, modular home  
 18 constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured  
 19 dwelling or duplex, or a multiunit residential building consisting of four units or less that is not part  
 20 of a multistructure complex of buildings.

21 [(12)] (11) “Small commercial structure” means a nonresidential structure that has a ground  
 22 area of 4,000 square feet or less, including exterior walls, and a height of not more than 20 feet from  
 23 the top surface of the lowest flooring to the highest interior overhead finish of the structure.

24 [(13)] (12) “Specialty contractor” means a contractor who performs work on a structure, project,  
 25 development or improvement and whose operations as such do not fall within the definition of  
 26 “general contractor.” “Specialty contractor” includes a person who performs work regulated under  
 27 ORS chapter 446.

28 **SECTION 9.** ORS 701.010 is amended to read:

29 701.010. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**  
 30 **vices** may adopt rules to make licensure optional for persons who offer, bid or undertake to perform  
 31 work peripheral to construction, as defined by administrative rule of the [*board*] **department**. The  
 32 following persons are exempt from licensure under this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        **SECTION 10.** ORS 701.013 is amended to read:

2        701.013. It is the intent of the Legislative Assembly to reduce the number of city business li-  
 3        censes that construction contractors and landscape contractors are required to obtain in order to  
 4        conduct business in the Portland metropolitan area. It is the purpose of this section and ORS 701.015  
 5        to enable construction contractors and landscape contractors to secure from the metropolitan ser-  
 6        vice district one business license that will permit the conduct of business by such contractors in  
 7        cities in which the contractors perform a limited amount of work and in which they do not have a  
 8        principal place of business. Furthermore, it is also the intent of the Legislative Assembly that this  
 9        section and ORS 701.015 apply only to contractors engaged in the building trades and crafts and to  
 10       landscape contractors without regard to [*any subsequent expansion of the*] **other** jurisdiction of the  
 11       [*Construction Contractors Board*] **Department of Consumer and Business Services** or State  
 12       Landscape Contractors Board over other trades and crafts. It is declared to be the policy of this  
 13       state that, to the maximum extent possible consistent with the requirements of this section and ORS  
 14       701.015, the cities within the boundaries of the metropolitan service district be allowed to control  
 15       the imposition of business license taxes and to maintain the level of revenues obtained from those  
 16       taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect  
 17       the construction business activity within the participating cities.

18       **SECTION 11.** ORS 701.035 is amended to read:

19       701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be  
 20       eligible for a license [*with the Construction Contractors Board*] **under this chapter**.

21       (2) The [*board*] **Department of Consumer and Business Services** shall establish two classes  
 22       of independent contractor licenses **under this chapter**:

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

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

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

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

33       (3) If a person who qualifies for a license under subsection (2)(b) of this section hires one or  
 34       more employees or falls into any of the categories set out in subsection (2)(a)(B) of this section, the  
 35       person is subject to penalties under ORS 701.992 for improper licensing. The person must reapply  
 36       to the [*board*] **department** in the correct class.

37       (4) The decision of the [*board*] **department under this chapter** that a person is an independent  
 38       contractor applies only when the person is performing work of the nature described in ORS 701.055  
 39       and 701.060.

40       **SECTION 12.** ORS 701.055 is amended to read:

41       701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a  
 42       contractor unless that person has a current, valid license issued by the [*Construction Contractors*  
 43       *Board*] **Department of Consumer and Business Services under this chapter**. A partnership,  
 44       corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as  
 45       a contractor unless that partnership, corporation or joint venture is licensed under this chapter. A

1 partnership or joint venture is licensed for the purpose of offering to undertake work as a contrac-  
 2 tor on a structure if any of the partners or joint venturers whose name appears in the business name  
 3 of the partnership or joint venture is licensed under this chapter.

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

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

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

22 \_\_\_\_\_

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

26 (b) I own, reside in or will reside in the completed dwelling. My general contractor is  
 27 \_\_\_\_\_, [*Construction Contractors Board*] **Department of Consumer and Business Ser-**  
 28 **VICES** license no. \_\_\_\_\_, license expiration date \_\_\_\_\_. I will instruct my general con-  
 29 tractor that all subcontractors who work on this dwelling must be licensed with the [*Construction*  
 30 *Contractors Board*] **Department of Consumer and Business Services**; or

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

33 (d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcon-  
 34 tractors licensed with the [*Construction Contractors Board*] **Department of Consumer and Busi-**  
 35 **ness Services**.

36 (e) If I change my mind and do hire a general contractor, I will contract with a general con-  
 37 tractor who is licensed with the [*Construction Contractors Board*] **Department of Consumer and**  
 38 **Business Services** and I will immediately notify the office issuing this building permit of the name  
 39 of the general contractor \_\_\_\_\_.

40 \_\_\_\_\_

41  
 42 (5) The [board] **department** shall adopt by rule a form entitled “Information Notice to Property  
 43 Owners About Construction Responsibilities” that shall describe, in nontechnical language and in  
 44 a clear and coherent manner using words in their common and everyday meaning, the responsibil-  
 45 ities property owners are undertaking by acting as their own general contractor and the problems

1 that could develop. The responsibilities described in the form shall include, but not be limited to:

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

4 (b) Workers' compensation insurance on workers.

5 (c) Liability and property damage insurance.

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

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

13 (8) It is prima facie evidence of doing business as a contractor if a person for that person's own  
14 use performs, employs others to perform, or for compensation and with the intent to sell the struc-  
15 ture, arranges to have performed any work described in ORS 701.005 [(3)] (2) if within any 36-month  
16 period that person offers for sale two or more newly built structures on which that work was per-  
17 formed.

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

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

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

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

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

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

31 (A) Names and addresses.

32 (B) License numbers.

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

36 (12) A contractor may not hire any subcontractor or other contractor to perform work unless  
37 the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS  
38 701.010.

39 (13) **The department shall prepare and provide at no cost to all licensed contractors a**  
40 consumer notification form designed to specifically inform a property owner what the property  
41 owner should do to protect themselves in a residential repair, remodel or construction project [*shall*  
42 *be prepared by the board and provided at no cost to all licensed contractors*]. The contractor shall  
43 deliver the form to the property owner when the contractor submits a bid or proposal for work on  
44 a residential structure. The form [*shall*] **must** include an explanation of the meaning of licensure,  
45 including a statement that licensure is not an endorsement of a contractor's work, and an explana-



1 tion of the bond and insurance levels required of contractors for the benefit of property owners. The  
 2 form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The  
 3 contractor may reproduce the form on the contractor's bid proposal.

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

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

12 **SECTION 13.** ORS 701.058 is amended to read:

13 701.058. The *[Construction Contractors Board]* **Department of Consumer and Business Ser-**  
 14 **VICES** shall develop a separate class of contractor license for contractors who are licensed develop-  
 15 ers.

16 **SECTION 14.** ORS 701.060 is amended to read:

17 701.060. (1) Any contractor licensed under this chapter may at any time apply for a license in  
 18 another category. The *[Construction Contractors Board]* **Department of Consumer and Business**  
 19 **Services** may charge a transfer fee not to exceed \$20 for each additional license.

20 (2) If a contractor applies for a license pursuant to subsection (1) of this section all construction,  
 21 alteration, improvement, moving over public highways, roads or streets, demolition or repair per-  
 22 formed by that contractor on buildings of all types *[shall be]* **is** subject to the provisions of this  
 23 chapter and to regulation by the *[board]* **department**. Such licensure *[shall be]* **is** exclusive as pro-  
 24 vided in ORS 701.055 (10).

25 **SECTION 15.** ORS 701.065 is amended to read:

26 701.065. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a  
 27 claim of a construction lien, or commence a claim with the *[Construction Contractors Board]* **De-**  
 28 **partment of Consumer and Business Services**, in arbitration or in any court of this state for  
 29 compensation for the performance of any work or for the breach of any contract for work that is  
 30 subject to this chapter, unless the contractor had a valid license issued by the *[board]*  
 31 **department**:

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

34 (2) The *[board]* **department**, arbitrator or court shall not apply the provisions of subsection (1)  
 35 of this section to a lien or claim if the *[board]* **department**, arbitrator or court determines that:

36 (a) The contractor either did not have a valid license at any time required under subsection (1)  
 37 of this section, or had an initial issuance thereof, and:

38 (A) The contractor was not aware of the requirement that the contractor be licensed, and the  
 39 contractor submitted a completed application for a license within a number of days established by  
 40 the *[board]* **department**, but not more than 90 days, of the date the contractor became aware of the  
 41 requirement;

42 (B) At the time the contractor perfected a claim of a construction lien or commenced any other  
 43 claim subject to the provisions of subsection (1) of this section, the contractor was licensed by the  
 44 *[board]* **department**; and

45 (C) Enforcement of the provisions of subsection (1) of this section would result in substantial

1 injustice to the contractor;

2 (b) The contractor was licensed by the [board] **department** for some but not all of the times  
 3 required under subsection (1) of this section and had a lapse in such license and:

4 (A) The contractor was not aware of the lapse in the license for more than a number of days  
 5 established by the [board] **department**, but not to exceed 90 days, before submitting a completed  
 6 application for license renewal with the [board] **department**;

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

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

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

17 (B) The licensed developer was unaware of the license requirement and obtained a license  
 18 within a time established by the [board] **department**, not to exceed 90 days after the licensed de-  
 19 veloper learned of the requirement;

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

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

24 (d) The claim:

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

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

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

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

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

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

37 **SECTION 16. ORS 701.067 is added to and made a part of ORS chapter 701.**

38 **SECTION 17. ORS 701.067 is amended to read:**

39 701.067. If any person suffered costs or damages as a result of an individual providing a false  
 40 or invalid [*Construction Contractors Board*] **Department of Consumer and Business Services**  
 41 **construction contractor license** number or otherwise misleading a person with respect to  
 42 licensure with the [board] **department under this chapter**, that person may bring suit in a court  
 43 of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the  
 44 prevailing party in an action under this section.

45 **SECTION 18. ORS 701.072 is amended to read:**

1           701.072. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**  
2 **Services**, by rule, shall impose training requirements for individuals and businesses seeking to be  
3 licensed under this chapter. The training required by the [*board*] **department** must relate to busi-  
4 ness practices and laws affecting construction contractors. The [*board*] **department** shall adopt  
5 standards for programs that provide training that meets the requirements of this subsection.

6           (2) In establishing training requirements under subsection (1) of this section, the [*board*] **de-**  
7 **partment** shall take into consideration the availability of training programs within the state and  
8 shall encourage training providers to use the most up-to-date technology. The [*board*] **department**  
9 shall recognize and grant credit for training provided by private organizations if the training pro-  
10 gram meets the standards established by the [*board*] **department** under subsection (1) of this sec-  
11 tion. The [*board*] **department** periodically shall review the qualifications of private organizations  
12 and instructors to determine compliance with the program standards. The [*board*] **department** shall  
13 develop and make available to the public a list of public and private programs that provide training  
14 that meets the training requirements established by the [*board*] **department** under subsection (1)  
15 of this section.

16           (3) The [*board*] **department**, by rule, shall approve a test for applicants for licensing under ORS  
17 701.075. The test shall measure the applicant's knowledge regarding business practices and laws that  
18 are the subject of the training required under subsection (1) of this section.

19           (4) Subsections (1) and (3) of this section do not apply to an applicant for licensing as a licensed  
20 developer.

21           **SECTION 19.** ORS 701.075 is amended to read:

22           701.075. (1) An applicant for a construction contractor license must submit the application on  
23 a form prescribed by the [*Construction Contractors Board*] **Department of Consumer and Business**  
24 **Services**. The application shall include, but not be limited to, the following information regarding  
25 the applicant:

26           (a) Classification of the license being sought.

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

30           (c) Social Security number.

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

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

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

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

39           (h) The name and address of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (H) Each individual who has a controlling ownership interest in, or management authority over,  
21 the applicant and who meets criteria adopted by the [board] **department** by rule.

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

24 (2) The application described in subsection (1) of this section must be accompanied by proof  
25 satisfactory to the [board] **department** that the applicant:

26 (a) Is in compliance with ORS 701.078.

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

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

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

31 **SECTION 20.** ORS 701.077 is amended to read:

32 701.077. (1) As used in ORS 701.078 and 701.102, "owner" means:

33 (a) A sole proprietor of, partner in or holder of a controlling interest in a business; or

34 (b) A person defined as an owner by [*Construction Contractors Board*] **Department of Con-**  
35 **sumer and Business Services** rule.

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

39 (a) A person who is solely a minority shareholder in a corporation;

40 (b) A member of a manager-managed limited liability company; or

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

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

44 701.078. (1) As used in this section, "responsible managing individual" means an individual who:

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

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

3 (b)(A) Has successfully completed the training and testing required for licensing under ORS  
 4 701.072 within a period identified by the [*Construction Contractors Board*] **Department of Con-**  
 5 **sumer and Business Services** by rule;

6 (B) Has demonstrated experience required by the [*board*] **department** by rule; or

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

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

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

11 **SECTION 22.** ORS 701.080 is amended to read:

12 701.080. A contractor shall notify the [*Construction Contractors Board*] **Department of Con-**  
 13 **sumer and Business Services** of any change of address while licensed and for one year following  
 14 the date the contractor's license expires or otherwise becomes inactive. The contractor shall so  
 15 notify the [*board*] **department** within 10 days of the date upon which the change of address occurs.  
 16 Initial notice of a contested case or arbitration directed by the [*board*] **department** to the last-  
 17 known address of record shall be considered delivered when deposited in the United States mail and  
 18 sent registered or certified or post office receipt secured. Any other communication directed by the  
 19 [*board*] **department** to the last-known address of record shall be considered delivered when depos-  
 20 ited in the United States mail, regular mail.

21 **SECTION 23.** ORS 701.085 is amended to read:

22 701.085. (1) An applicant for issuance or renewal of a contractor license shall file with the  
 23 [*Construction Contractors Board*] **Department of Consumer and Business Services** a surety bond  
 24 with one or more corporate sureties authorized to do business in this state in the amount set forth  
 25 in subsections (2) to (5) of this section. The surety bond must provide that the applicant, with regard  
 26 to work subject to this chapter, will pay claims ordered paid by the [*board*] **department** under ORS  
 27 701.145 or 701.146. Bonds filed under this subsection shall remain in effect for at least one year or  
 28 until depleted by claims paid under ORS 701.150, unless the surety sooner cancels the bond. At the  
 29 discretion of the surety the bond may be continued for an additional period by continuation certif-  
 30 icate. Except as provided in subsection (6) of this section, the aggregate liability of the surety under  
 31 the bond for claims against the bond may not exceed the penal sum of the bond no matter how many  
 32 years the bond is in force. Except as provided in subsection (6) of this section, an extension by  
 33 continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability  
 34 of the surety.

35 (2) A general contractor or licensed developer shall obtain a surety bond in the amount of  
 36 \$15,000.

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

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

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

43 (6) The [*board*] **department**, by rule, may require a licensee to obtain a new surety bond if,  
 44 pursuant to a [*board*] **department** order for payment of a claim described in ORS 701.140, the surety  
 45 pays a claim out of the bond of the licensee. The new surety bond must be in the amount set forth

1 in subsections (2) to (5) of this section unless a higher amount is required by a [board] **department**  
 2 condition or rule described in subsection (7) or (8) of this section. The [board] **department** may al-  
 3 low a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the  
 4 full penal sum of the bond, notwithstanding payment by the surety on the claim.

5 (7) If the amount the licensee must pay against the bond under this section exceeds the amount  
 6 of the bond, the [board] **department** shall suspend the contractor's license until the amount owed  
 7 is paid. The [board] **department**, as a condition of ending the suspension, may require a contractor  
 8 requesting reinstatement of a license to file a bond of an amount up to five times as much as the  
 9 amount required ordinarily of a licensee under this section.

10 (8) The [board] **department** by rule may establish conditions for applicants or persons licensed  
 11 under this chapter under which the applicant or licensee must file a bond of an amount up to five  
 12 times as much as the amount required ordinarily of an applicant or licensee under this section. The  
 13 [board] **department** may reduce the amount of bond it would otherwise require if the contractor  
 14 demonstrates satisfactory completion of approved elective classes on dispute resolution and pre-  
 15 vention, basic accounting and record keeping or such other classes as the [board] **department** may  
 16 prescribe.

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

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

23 (11) A suit or action may not be commenced against a surety on a bond required under this  
 24 section until 30 days after the date that the surety is notified by the [board] **department** under ORS  
 25 701.150 that payment is due on the claim.

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

28 (a) Costs;

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

30 (c) Twice the amount of any damages that the [board] **department** ordered the surety to pay  
 31 on the claim, if the surety arbitrarily and capriciously refused to pay upon order of the [board] **de-**  
 32 **partment**.

33 **SECTION 24.** ORS 701.102 is amended to read:

34 701.102. (1) As used in this section, "construction contractor license" means a license issued  
 35 within the United States to engage in the business of construction contracting.

36 (2) The [*Construction Contractors Board*] **Department of Consumer and Business Services**  
 37 may suspend or refuse to issue a license required under this chapter to a business if:

38 (a) The business owes a construction debt or has had a construction contractor license revoked  
 39 or suspended;

40 (b) An owner or officer of the business owes a construction debt or has had a construction  
 41 contractor license revoked or suspended; or

42 (c) An owner or officer of the business was an owner or officer of another business at the time  
 43 the other business incurred a construction debt that is owing or at the time of an event that re-  
 44 sulted in the revocation or suspension of the other business's construction contractor license.

45 (3) The [board] **department** may place a contractor on probation if a total of three or more

1 claims are filed with the [board] **department** within a 12-month period against the contractor or a  
 2 former licensed construction contracting business in which the contractor held at least a 10 percent  
 3 ownership interest, measured as determined by [board] **department** rule. A contractor may not be  
 4 placed on probation unless the [board] **department** determines after investigation that it is likely  
 5 that the contractor has caused harm to the claimants. The [board] **department** may require a con-  
 6 tractor that is placed on probation to develop a corrective action plan, to attend specific classes and  
 7 to resolve outstanding claims. The [board] **department** may require a contractor that is placed on  
 8 probation to take training and pass a test, both as described in ORS 701.072. The [board] **depart-**  
 9 **ment** shall take action to terminate the contractor's license if the contractor is unwilling or unable  
 10 to comply with the conditions of probation.

11 **SECTION 25.** ORS 701.103 is amended to read:

12 701.103. A lapse, surrender, suspension or other change in license status does not affect any  
 13 authority otherwise granted the [*Construction Contractors Board*] **Department of Consumer and**  
 14 **Business Services** to proceed with an investigation, conduct a disciplinary hearing or take disci-  
 15 plinary action against a person for a violation of this chapter or rules of the [board] **department**,  
 16 or to determine a timely claim described in ORS 701.140.

17 **SECTION 26.** ORS 701.115 is amended to read:

18 701.115. (1) A license is valid for two years from the date of issuance unless the license is re-  
 19 voked or suspended as set forth in ORS 701.135.

20 (2) A license may be renewed by submitting an application for renewal on the prescribed form,  
 21 providing any additional information required, including evidence of completion of any required ed-  
 22 ucation, and submitting the appropriate application fee, as provided by [*Construction Contractors*  
 23 *Board*] **Department of Consumer and Business Services** rule.

24 (3) The [board] **department** may vary the dates of license renewal by giving to the licensee  
 25 written notice of the renewal date assigned and by making appropriate adjustments in the fee for  
 26 the license renewal application.

27 (4) If a contractor applies for renewal not more than one year after the contractor's license  
 28 lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the  
 29 [board] **department** may renew the lapsed license. The [board] **department** may designate the ef-  
 30 fective date of renewal as the last date on which the contractor was licensed.

31 (5) A contractor may convert a license to inactive status if the contractor is not engaged in  
 32 work as a contractor. A contractor having an inactive license is subject to [board] **department** li-  
 33 censing requirements and application fees, but is not subject to the bonding requirement of ORS  
 34 701.085 or the insurance requirement of ORS 701.105. An inactive license is not considered a valid  
 35 license for purposes of offering to undertake construction work, submitting a bid for construction  
 36 work, obtaining a building permit or performing construction work. A license may not be placed or  
 37 maintained in inactive status more than once during any two-year licensing term.

38 (6) The [board] **department** shall issue a pocket-card certificate of licensure to a contractor li-  
 39 censed under this chapter indicating the type of license issued.

40 **SECTION 27.** ORS 701.120 is amended to read:

41 701.120. (1) As used in this section, a "specialized education program" means one or more of the  
 42 following:

43 (a) A structured program that is approved or certified by an appropriate state or federal agency,  
 44 or by an organization recognized by the [*Construction Contractors Board*] **Department of Consumer**  
 45 **and Business Services** as representing construction contractors, and is designed to educate con-

1 tractors to deal with one or more specific consumer health or safety issues.

2 (b) A *[board-approved]* program **approved by the department** from an accredited college or  
3 university that grants a two-year or four-year degree upon successful completion of the program.

4 (c) An apprenticeship program that is approved by the *[board]* **department**.

5 (2) The *[board]* **department** may identify general contractor and specialty contractor activities  
6 that require or substantially benefit from specialized education and establish standards for programs  
7 providing specialized education in those activities. The *[board]* **department** may recognize and  
8 adopt the program standards established by another state agency regulating the same or related  
9 activities.

10 (3) Upon receipt of a request from a contractor who has successfully completed a specialized  
11 education program meeting *[board]* **department** standards, the *[board]* **department** shall note the  
12 specialized education on the contractor's licensing record as part of the contractor's professional  
13 credentials. The *[board]* **department** may remove a professional credential from the contractor's li-  
14 censing record if the contractor fails to complete continuing education or other requirements im-  
15 posed by the entity issuing the credential for maintaining competency in the activity, if the  
16 requirements were clearly stated in writing and provided to the contractor by the entity.

17 (4) The *[board]* **department** shall include professional credentials described in this section in  
18 releases of contractor licensing information by the *[board]* **department**. The *[board]* **department**  
19 shall adopt rules to permit the inclusion of professional credentials described in this section in ad-  
20 vertising or other information holding forth to the public the qualifications of a contractor.

21 **SECTION 28.** ORS 701.125 is amended to read:

22 701.125. Each applicant shall pay to the *[Construction Contractors Board]* **Department of Con-**  
23 **sumer and Business Services:**

24 (1) For an application for the issuance or renewal of a contractor license, an application fee as  
25 determined by the *[board]* **department** under ORS 701.130.

26 (2) For an application for changes to a contractor license, other than changes due to clerical  
27 errors by the *[board]* **department**, an application fee established by *[board]* **department** rule.

28 **SECTION 29.** ORS 701.130 is amended to read:

29 701.130. (1) Before July 1 of each year, the *[Construction Contractors Board]* **Department of**  
30 **Consumer and Business Services** shall determine the amounts of the fees to be charged for ap-  
31 plications under ORS 701.125 for the issuance or renewal of contractor licenses. The fee amounts  
32 are subject to prior approval of the Oregon Department of Administrative Services and a report to  
33 the Emergency Board prior to adoption. The fee amounts shall be within the budget authorized by  
34 the Legislative Assembly as that budget may be modified by the Emergency Board. The fee amounts  
35 established under this section may not exceed the cost of administering the regulatory program of  
36 the *[board]* **department** under this chapter, as authorized by the Legislative Assembly within the  
37 *[board's]* **department's** budget, as the budget may be modified by the Emergency Board.

38 (2) The amounts of the fees determined by the *[board]* **department** under subsection (1) of this  
39 section shall be effective as set by rule.

40 **SECTION 30.** ORS 701.135 is amended to read:

41 701.135. (1) The *[Construction Contractors Board]* **Department of Consumer and Business**  
42 **Services** may revoke, suspend or refuse to issue or reissue a license and the *[board]* **department**  
43 may assess a civil penalty as provided in ORS 701.992 if the *[board]* **department** determines after  
44 notice and opportunity for hearing:

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



- 1 (b) That the licensee has violated a rule or order of the *[board]* **department**.
- 2 (c) That the licensee has knowingly assisted an unlicensed person to act in violation of this  
3 chapter.
- 4 (d) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because  
5 the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person  
6 claiming the lien.
- 7 (e) That the licensee has knowingly provided false information to the *[board]* **department**.
- 8 (f) That the licensee has worked without a construction permit where a permit is required and  
9 the work resulted in a claim being filed with the *[board]* **department**. For purposes of this para-  
10 graph, “construction permit” includes a building permit, electrical permit, mechanical permit or  
11 plumbing permit.
- 12 (g) That the number of licensed contractors working together on the same task on the same job  
13 site, where one of the contractors is licensed as exempt under ORS 701.035 (2)(b), exceeded the fol-  
14 lowing:
- 15 (A) Two sole proprietors;  
16 (B) One partnership;  
17 (C) One corporation; or  
18 (D) One limited liability company.
- 19 (h) Consistent with the provisions of ORS 670.280, that the licensee or applicant has been con-  
20 victed of one of the following crimes:
- 21 (A) Murder;  
22 (B) Assault in the first degree;  
23 (C) Kidnapping;  
24 (D) Rape, sodomy or unlawful sexual penetration;  
25 (E) Sexual abuse;  
26 (F) Arson in the first degree;  
27 (G) Robbery in the first degree;  
28 (H) Theft in the first degree; or  
29 (I) Theft by extortion.
- 30 (i) That the licensee or applicant has not, within 90 days after the date when payment was re-  
31 ceived from the public contracting agency, or contractor in the case of a subcontractor, made pay-  
32 ment to any person for supplying labor or materials contracted for with a public contract for a  
33 public improvement plus the amount of interest due.
- 34 (j) That the licensee or applicant has repeatedly reported bad faith or false claims of nonpay-  
35 ment against contractors or subcontractors.
- 36 (k) That the licensee or applicant has engaged in conduct as a contractor that is dishonest or  
37 fraudulent and that the *[board]* **department** finds injurious to the welfare of the public.
- 38 (2)(a) The *[administrator]* **Director** of the *[board]* **Department of Consumer and Business**  
39 **Services**, in accordance with administrative rules adopted by the *[board]* **department** and after  
40 setting forth specific reasons for the findings, may suspend or refuse to renew a license without  
41 hearing in any case where the *[administrator]* **director** finds a serious danger to the public welfare,  
42 including but not limited to:
- 43 (A) Lack of a surety bond required by ORS 701.085;  
44 (B) Lack of liability insurance required by ORS 701.105;  
45 (C) Hiring employees while licensed as exempt under ORS 701.035; or

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

2 (b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the  
3 licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the  
4 licensee or applicant as soon as practicable after the demand, and the [administrator] **director** shall  
5 issue an order pursuant to the hearing as required by ORS chapter 183 confirming, altering or re-  
6 voking the [administrator's] **director's** earlier order. Notwithstanding ORS 670.325, a hearing need  
7 not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to  
8 a citation for violation that is subject to judicial determination in any court of this state, and the  
9 order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

10 (3) In addition to all other remedies, if it appears to the [board] **department** that a person has  
11 engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this  
12 chapter, the [board] **department** may direct the Attorney General or the district attorney of the  
13 county in which the act, practice or transaction occurs, to apply to the court for an injunction re-  
14 straining the person from violating the provisions of this chapter. An injunction may not issue for  
15 failure to maintain the list provided for in ORS 701.055 (11) unless the court determines that the  
16 failure is intentional.

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

19 (5) If the [board] **department** suspends or revokes the license of an individual contractor or  
20 contractor business for a violation of subsection (1)(g) of this section, the [board] **department** may  
21 not restore or reissue the license unless the individual contractor or a responsible managing indi-  
22 vidual, as defined in ORS 701.078, for the contractor business has successfully completed the train-  
23 ing and testing described in ORS 701.072.

24 **SECTION 31.** ORS 701.138 is amended to read:

25 701.138. (1) Every person offering to undertake or undertaking construction of building sewer  
26 piping shall comply with the requirements of ORS chapter 701.

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

29 (a) The person's [*Construction Contractors Board*] **Department of Consumer and Business**  
30 **Services construction contractor** license number and category;

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

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

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

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

38 **SECTION 32.** ORS 701.139 is amended to read:

39 701.139. Except as provided in ORS 701.148 (2), the [*Construction Contractors Board*] **Depart-**  
40 **ment of Consumer and Business Services** may resolve a dispute against a licensed contractor  
41 only if a claim is made against the contractor's surety bond required by ORS 701.085. In order to  
42 have access to the bond, a person must file a claim of a type described in ORS 701.140 within the  
43 applicable time limitation described in ORS 701.143. The claim must be filed and resolved as follows:

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

1 (2) A claim that involves work on a small commercial structure or an appurtenance thereto may  
 2 be resolved as provided in ORS 701.145 or 701.146.

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

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

9 (5) Notwithstanding subsections (1) to (4) of this section, with prior agreement of the claimant  
 10 and the licensed contractor, a claim may be resolved by the [board] **department** through binding  
 11 arbitration under ORS 701.148.

12 **SECTION 33.** ORS 701.140 is amended to read:

13 701.140. A claim made against a licensed contractor’s bond required by ORS 701.085 must arise  
 14 from the performance, or a contract for the performance, of work that is subject to this chapter.  
 15 The claim must be of one or more of the following types:

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

18 (a) Negligent work.

19 (b) Improper work.

20 (c) Breach of contract.

21 (2) A claim against a contractor by the owner of a structure or other real property to discharge,  
 22 or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075  
 23 to 87.093 under circumstances described under this subsection. If the claim is processed under ORS  
 24 701.145, the [*Construction Contractors Board*] **Department of Consumer and Business Services**  
 25 may reduce a claim by any amount the claimant owes the contractor. The [board] **department** shall  
 26 process claims described in this subsection under ORS 701.145 only if:

27 (a) The owner paid the contractor for that contractor’s work subject to this chapter; and

28 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to  
 29 87.093 because the contractor failed to pay the person claiming the lien for that person’s contribu-  
 30 tion toward completion of the improvement.

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

32 (a) Negligent work;

33 (b) Improper work; or

34 (c) Breach of contract.

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

36 (5) A claim, as limited by rule of the [board] **department**, by a person furnishing material or  
 37 renting or supplying equipment to a contractor. The minimum limit set by the [board] **department**  
 38 shall not exceed \$150.

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

41 **SECTION 34.** ORS 701.143 is amended to read:

42 701.143. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**  
 43 **VICES** may not process a claim against a licensed contractor, including a claim based upon a court  
 44 judgment or arbitration award, unless the claim is filed in a timely manner as follows:

45 (1) Except as otherwise provided in this section, if the owner of a new structure files the claim,

1 the [board] **department** must receive the claim no later than the earlier of:

2 (a) One year after the date the structure was first occupied; or

3 (b) Two years after substantial completion of the structure by the contractor filed against.

4 (2) Except as otherwise provided in this section, if the owner of an existing structure files the  
5 claim, the [board] **department** must receive the claim no later than one year after the date the  
6 work was substantially completed by the contractor filed against.

7 (3) Regardless of whether the claim involves a new or existing structure, if the owner of the  
8 structure files the claim and the licensed contractor failed to begin the work, the [board] **depart-**  
9 **ment** must receive the claim no later than one year after the date the parties entered into the  
10 contract.

11 (4) Regardless of whether the claim involves a new or existing structure, if the owner of the  
12 structure files the claim and the licensed contractor failed to substantially complete the work, the  
13 [board] **department** must receive the claim no later than one year after the date the contractor  
14 ceased to work on the structure.

15 (5) Except as otherwise provided in this section, if a licensed contractor files the claim against  
16 the licensed contractor performing work as a subcontractor on a new structure, the [board] **de-**  
17 **partment** must receive the claim no later than the earlier of:

18 (a) Fourteen months after the date the structure was first occupied; or

19 (b) Two years after substantial completion of the structure.

20 (6) Except as otherwise provided in this section, if a licensed contractor files the claim against  
21 the licensed contractor performing work as a subcontractor on an existing structure, the [board]  
22 **department** must receive the claim no later than 14 months after the date the work on the struc-  
23 ture was substantially completed.

24 (7) If a licensed contractor files the claim against the licensed contractor performing work as  
25 a subcontractor on a structure and the subcontractor failed to substantially complete the work, the  
26 [board] **department** must receive the claim no later than 14 months after the date the subcontractor  
27 ceased to work on the structure.

28 (8) If the licensed contractor's employee, subcontractor or material or equipment supplier files  
29 the claim, the [board] **department** must receive the claim no later than one year after the date the  
30 contractor incurred the indebtedness.

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

32 701.145. For a claim described in ORS 701.139 (1) involving work on a residential structure or  
33 an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial  
34 structure or an appurtenance thereto that is not resolved under ORS 701.146 or an owner's claim  
35 described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance  
36 thereto that is not resolved under ORS 701.146:

37 (1) The person having the claim must file with the [*Construction Contractors Board*] **Department**  
38 **of Consumer and Business Services** a statement of the claim in a form prescribed by the [board]  
39 **department**.

40 (2) The [board] **department** may suspend processing of the claim if:

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

44 (b) The [board] **department** determines that the nature or complexity of the claim is such that  
45 a court is the appropriate forum for the adjudication of the claim.

1 (3) The [board] **department** may dismiss or close the claim as established by rule of the  
2 [board] **department** if any of the following conditions apply:

3 (a) The claimant does not permit the contractor against whom the claim is filed to be present  
4 at an on-site investigation made by the [board] **department**.

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

11 (c) The amount in controversy is less than an amount adopted by the [board] **department** and  
12 not more than \$250.

13 (4) Upon acceptance of the statement of claim, the [board] **department** shall give notice to the  
14 contractor against whom the claim is made and shall initiate proceedings to determine the validity  
15 of the claim. If, after investigation, the [board] **department** determines that a violation of this  
16 chapter or of any rule adopted thereunder has occurred, or damage has been caused by the con-  
17 tractor, the [board] **department** may recommend to the contractor such action as the [board] **de-**  
18 **partment** considers appropriate to compensate the claimant. If the contractor performs accordingly,  
19 the [board] **department** shall give that fact due consideration in any subsequent disciplinary pro-  
20 ceeding brought by the [board] **department**. If a claim is for less than \$1,000, the [board] **depart-**  
21 **ment** may process the claim without conducting an on-site investigation.

22 (5) Subject to ORS 701.148, if the [board] **department** is unable to resolve the claim under  
23 subsection (4) of this section, the [board] **department** may issue a contested case notice under ORS  
24 183.415 and:

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

27 (b) Refer the matter for hearing.

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

30 **SECTION 36.** ORS 701.146 is amended to read:

31 701.146. For a claim described in ORS 701.139 (3) involving work on a large commercial struc-  
32 ture or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small  
33 commercial structure or an appurtenance thereto that is not resolved under ORS 701.145 or an  
34 owner's claim described in ORS 701.139 (4) involving work on a large commercial structure or an  
35 appurtenance thereto that is not resolved under ORS 701.145:

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

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

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

41 (2) The claimant must file the claim with the [*Construction Contractors Board*] **Department of**  
42 **Consumer and Business Services** by delivering to the [board] **department** a copy of the complaint  
43 or the demand for arbitration or other document necessary to initiate arbitration. The complaint,  
44 demand or other document must be accompanied by a statement of claim in a form prescribed by  
45 [board] **department** rule. The claimant must also give notice to the surety on the bond by delivering

1 to the surety a copy of the complaint, demand for arbitration or other document necessary to initi-  
 2 ate arbitration and a copy of the statement of claim. Delivery to the [board] **department** and the  
 3 surety must be accomplished by certified mail, return receipt requested, no later than the earlier  
 4 of:

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

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

7 (c) The 30th day before:

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

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

10 (3) Filing the claim with the [board] **department** under subsection (2) of this section constitutes  
 11 filing the claim for purposes of establishing timeliness of the claim under ORS 701.143 and priority  
 12 of the claim under ORS 701.150.

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

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

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

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

1 **department** may determine:

2 (a) Whether the claim was timely filed with the [board] **department** as provided in ORS 701.143.

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

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

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

7 **SECTION 37.** ORS 701.147 is amended to read:

8 701.147. (1) Unless otherwise provided by the [*Construction Contractors Board*] **Department of**  
9 **Consumer and Business Services** by rule, before filing a claim under ORS 701.139, a person must  
10 send notice to the contractor that the person intends to file the claim. The person must send the  
11 notice at least 30 days before filing the claim. The notice must be mailed by certified mail to the last  
12 known address of the contractor as shown in [board] **department** records. The [board] **department**  
13 by rule may:

14 (a) Specify the manner in which the person may show compliance with this subsection at the  
15 time of filing the claim.

16 (b) Provide that all or part of the requirements for sending a notice under this subsection may  
17 be waived if the contractor, by other means, has actual notice of the dispute with the person filing  
18 the claim.

19 (2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than  
20 45 days before expiration of the time limitation under ORS 701.143 for the [board] **department** to  
21 receive the claim, the time limitation for the [board] **department** to receive the claim does not ex-  
22 pire until 60 days after the notice is mailed.

23 (3) The [board] **department** by rule may impose a processing fee for claims filed under ORS  
24 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for  
25 a plaintiff filing a civil action in circuit court. The [board] **department** may impose different pro-  
26 cessing fees for claims processed under ORS 701.145 than for claims processed under ORS 701.146.

27 (4) If the [board] **department** adopts rules under subsection (3) of this section, the rules:

28 (a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevail-  
29 ing claimant recover processing fees as damages in the final order of the [board] **department**.

30 (b) Must provide that the [board] **department** may waive or defer all or part of the processing  
31 fee upon application by the person filing the claim that shows the person is unable to pay all or part  
32 of the fee. The application must be made under oath and notarized. The application must show the  
33 average monthly income and expenses of the claimant, assets and liabilities of the claimant and any  
34 other information required by [board] **department** rule.

35 (c) May provide for the processing fee to be waived for all claims that are based on the fur-  
36 nishing of labor by a claimant to a contractor. The [board] **department** may provide for processing  
37 fee waiver under this paragraph only if, in the opinion of the [board] **department**, a majority of  
38 claimants who file claims based on the furnishing of labor to contractors are eligible for fee waivers  
39 as described in paragraph (b) of this subsection.

40 **SECTION 38.** ORS 701.148 is amended to read:

41 701.148. (1) Subject to subsection (4) of this section, if the resolution of a claim under ORS  
42 701.145 requires a hearing, the [*Construction Contractors Board*] **Department of Consumer and**  
43 **Business Services** may require that the hearing be conducted as a binding arbitration under rules  
44 adopted by the [board] **department** under subsection (3) of this section. This subsection does not  
45 authorize the [board] **department** to require binding arbitration of a claim that is subject to ORS

1 701.146.

2 (2) The *[board]* **department** may use mediation or arbitration to resolve a construction dispute  
3 between any parties who agree to follow the rules of the *[board]* **department**, including but not  
4 limited to parties to a claim that is subject to ORS 701.146.

5 (3) Except as provided in this subsection, rules adopted by the *[board]* **department** to regulate  
6 arbitration under subsections (1) and (2) of this section must substantially conform with the pro-  
7 visions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and  
8 36.690 to 36.740. The rules may:

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

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

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

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

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

17 (4) A party to a claim that is subject to a *[board]* **department** order of binding arbitration under  
18 subsection (1) of this section may avoid the arbitration if the party requests to have the claim re-  
19 solved through a contested case hearing or files a complaint in a court. A party making a request  
20 or filing a complaint under this subsection is subject to the following provisions:

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

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

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

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

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

43 (f) The *[board]* **department** may adopt a rule that a contested case hearing for a claim of less  
44 than \$1,000 is not available under this subsection.

45 (g) The provisions of paragraph (b) of this subsection are in addition to any other requirements



1 imposed by law regarding the filing of a complaint.

2 (5) The [board] **department** may refuse to accept a dispute for mediation or arbitration under  
3 subsection (1) or (2) of this section if the [board] **department** determines that the nature or com-  
4 plexity of the dispute is such that a court or other forum is more appropriate for resolution of the  
5 dispute.

6 **SECTION 39.** ORS 701.149 is amended to read:

7 701.149. (1) An arbitration conducted under ORS 701.148 must be held before an administrative  
8 law judge assigned under ORS 183.600 to 183.690 to act as arbitrator on behalf of the [*Construction*  
9 *Contractors Board*] **Department of Consumer and Business Services**. The assignment of an ad-  
10 ministrative law judge to act as arbitrator is subject to a request for a different arbitrator under  
11 ORS 183.645 or a rule adopted pursuant to ORS 183.645.

12 (2) If a party to a claim under ORS 701.145 requests a contested case hearing, the [board] **de-**  
13 **partment** shall schedule the hearing.

14 (3) The [board] **department** may adopt rules governing the avoidance of a contested case  
15 hearing. The rules may include, but need not be limited to, a limit on the time period during which  
16 a party to a claim may avoid a contested case hearing by filing a complaint in a court.

17 (4) Contested case hearings before the [board] **department** must be conducted by an adminis-  
18 trative law judge assigned under ORS 183.600 to 183.690. Notwithstanding ORS 670.325, the [board]  
19 **department** may delegate authority to the administrative law judge to issue a final order in any  
20 matter.

21 (5) In assigning administrative law judges for arbitration and contested case hearings conducted  
22 under this section, the chief administrative law judge of the Office of Administrative Hearings es-  
23 tablished under ORS 183.605 shall defer to [board] **department** requests.

24 (6) If a claim is submitted for determination by a court, the [board] **department** may require  
25 that the claimant provide status reports on the pending action. The [board] **department** may dismiss  
26 or close a claim filed under ORS 701.139 if the claimant fails to submit status reports on a pending  
27 action.

28 (7) ORS 183.600 to 183.690 do not limit in any way the ability of the [board] **department** to  
29 make full use of alternative dispute resolution, including mediation or arbitration, to resolve claims  
30 against contractors filed under ORS 701.139.

31 **SECTION 40.** ORS 701.150 is amended to read:

32 701.150. (1) If a [*Construction Contractors Board*] **Department of Consumer and Business**  
33 **Services** final order is not paid by the contractor, the [board] **department** shall notify the surety  
34 on the bond. The surety may not pay a claim until the surety receives notice from the [board] **de-**  
35 **partment** that the claim is ready for payment.

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

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

43 (4) Payments from the surety bond of a contractor pursuant to [board] **department** order and  
44 notice are satisfied in the following priority in any 90-day period. A 90-day period begins on the date  
45 the first claim is filed with the [board] **department**. Subsequent 90-day periods begin on the date

1 the first claim is filed with the *[board]* **department** after the close of the preceding 90-day period.

2 Within a 90-day period:

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

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

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

14 (A) Labor, including employee benefits.

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

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

18 (d) If the total claims filed with the *[board]* **department** against a contractor within 90 days  
 19 after the *[board]* **department** receives notice of the first claim against the contractor exceed the  
 20 amount of the bond available for those claims, the bond shall be apportioned as the *[board]* **de-**  
 21 **partment** determines, subject to the priorities established under this section.

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

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

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

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

32 (6) The total amount paid from any one bond for costs, interest and attorney fees may not ex-  
 33 ceed \$3,000.

34 **SECTION 41.** ORS 701.160 is amended to read:

35 701.160. Notwithstanding ORS 9.320:

36 (1) A party may appear or be represented by an individual who is not a member of the Oregon  
 37 State Bar in a proceeding before the *[Construction Contractors Board]* **Department of Consumer**  
 38 **and Business Services related to construction contractors** if:

39 (a) The party is a corporation and the individual is an officer of the corporation;

40 (b) The party is a partnership, or a limited liability partnership or foreign limited liability  
 41 partnership as those terms are defined in ORS 67.005, and the individual is a partner in the part-  
 42 nership, limited liability partnership or foreign limited liability partnership;

43 (c) The party is a limited partnership as defined in ORS 70.005 and the individual is a general  
 44 partner in the partnership;

45 (d) The party is a manager-managed limited liability company as defined in ORS 63.001 and the

1 individual is a manager of the company; or

2 (e) The party is a member-managed limited liability company as defined in ORS 63.001 and the  
3 individual is a member of the company.

4 (2) In addition to parties described in subsection (1) of this section, the [board] **department**, by  
5 rule, may recognize particular business forms as parties that may appear or be represented by an  
6 individual who is not a member of the Oregon State Bar in a proceeding before the [board] **de-**  
7 **partment**. A [board] **department** rule adopted under this subsection must identify the business form  
8 of the party and specify the required relationship between the party and the individual. The  
9 [board] **department** may allow appearance or representation of a party only by an individual who  
10 is a director, officer, partner, trustee, manager or authorized regular employee of the party.

11 **SECTION 42.** ORS 701.175 is amended to read:

12 701.175. A contract that is for the performance of work on a residential structure and that is  
13 subject to this chapter may not contain a provision that limits the right of a person to file a claim  
14 described in ORS 701.140 with the [Construction Contractors Board] **Department of Consumer and**  
15 **Business Services**. A contract described in this section may contain a provision requiring medi-  
16 ation or arbitration of a dispute arising from the contract.

17 **SECTION 43.** ORS 701.180 is amended to read:

18 701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or  
19 any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings  
20 within 30 days after notification by the [Construction Contractors Board] **Department of Consumer**  
21 **and Business Services** of a claim under ORS 701.145 is a waiver by the contractor of any con-  
22 tractual right to mediation or arbitration.

23 **SECTION 44.** ORS 701.205 is amended to read:

24 701.205. (1)(a) The Construction Contractors Board is established[, *consisting*] **within the De-**  
25 **partment of Consumer and Business Services. The board consists** of nine members appointed  
26 by the [*Governor subject to confirmation by the Senate in the manner provided by law.*] **Director of**  
27 **the Department of Consumer and Business Services. Of the members:**

28 (A) Three [*of the members*] shall be contractors who primarily work on residential or small  
29 commercial structures, including one contractor engaged in the business of remodeling[.].

30 (B) **Two must be general contractors who primarily work on large commercial struc-**  
31 **tures.**

32 (C) **One must be either a specialty contractor who primarily works on large commercial**  
33 **structures or a limited contractor.**

34 (D) **One must be an elected representative of a governing body of local government.**

35 (E) Two shall be public members [*and one shall be an elected representative of a governing body*  
36 *of local government. Two of the members shall be general contractors who primarily work on large*  
37 *commercial structures, and one shall be a specialty contractor who primarily works on large commer-*  
38 *cial structures or a limited contractor*].

39 (b) One member who is a contractor may be a certified [*as a*] home inspector.

40 (2) The term of office of each member is four years, but a member serves at the pleasure of the  
41 [Governor] **director**. Before the expiration of the term of a member, the [Governor] **director** shall  
42 appoint a successor whose term begins on July 1 next following. A member is eligible for reap-  
43 pointment. If there is a vacancy for any cause, the [Governor] **director** shall make an appointment  
44 immediately effective for the unexpired term.

45 (3) In order to be eligible for board membership, the six contractor members of the board shall

1 be licensed under this chapter and shall maintain their licenses in good order during their term of  
2 office.

3 **(4) In addition to any other function delegated to the board by the director, the primary**  
4 **function of the board is to counsel and advise the director in the administration and**  
5 **enforcement of this chapter by the Department of Consumer and Business Services.**

6 **SECTION 45.** ORS 701.215 is amended to read:

7 701.215. (1) The Construction Contractors Board shall select from among its members a chair-  
8 person, a vice chairperson and such other officers for such terms and with such duties and powers  
9 necessary for the performance of their duties as the board determines.

10 (2) A majority of the members of the board constitutes a quorum for the transaction of business.

11 (3) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

12 (4) The board may create advisory committees [*as the board considers necessary*] **subject to**  
13 **approval by the Director of the Department of Consumer and Business Services.** The chair-  
14 person of the board, or a board member designated by the chairperson, shall be a member of any  
15 advisory committee created by the board.

16 **SECTION 46.** ORS 701.225 is amended to read:

17 701.225. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**  
18 **Services** may investigate the activities of any person engaged in the building and construction in-  
19 dustry to determine compliance with this chapter.

20 (2) With the approval of the city or county, the [*board*] **department** may conduct investigations  
21 with city or county inspectors, provided that the city or county is reimbursed by the [*board*] **de-**  
22 **partment** for the costs of such investigations.

23 (3) Any inspector authorized by the [*board*] **department** to determine compliance with the pro-  
24 visions of this chapter is authorized to require any person who is engaged in any activity regulated  
25 by this chapter to demonstrate proof of compliance with the licensing requirements of this chapter.  
26 If a person who is contracting directly with the owner of a structure does not demonstrate proof  
27 of compliance with the licensing requirements of this chapter, the inspector shall give notice of  
28 noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state  
29 that the person is not in compliance with the licensing requirements of this chapter and shall pro-  
30 vide that unless the person demonstrates proof of compliance within 10 days of the date of the no-  
31 tice, the inspector may by order stop all work then being done by the person. The notice of  
32 noncompliance shall be served upon the person and shall be served upon or delivered to the owner  
33 of each structure upon which the person is then performing work under contract, or mailed to all  
34 persons who are mortgagees or trust deed beneficiaries of record with respect to the real property  
35 upon which each such structure is situated. If more than one person is the owner of any such  
36 structure, a copy of the notice need be given to only one of such persons. If after receipt of the  
37 notice of noncompliance the person fails within the 10-day period specified in the notice to demon-  
38 strate proof of compliance with the licensing requirements of this chapter, the inspector is author-  
39 ized to order the work stopped by notice in writing served on any persons engaged in the activity.  
40 Any person so notified shall stop such work until proof of compliance is demonstrated. However, the  
41 inspector may not order the work stopped until at least 10 days after the copies of the notice of  
42 noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and  
43 trust deed beneficiaries specified in this subsection.

44 (4) The [*board*] **department** has the power to administer oaths, issue notices and subpoenas in  
45 the name of the [*board*] **department**, compel the attendance of witnesses and the production of ev-

1 idence, hold hearings and perform such other acts as are reasonably necessary to carry out its du-  
2 ties under this chapter.

3 (5) If any person fails to comply with a subpoena issued under subsection (4) of this section or  
4 refuses to testify on matters on which the person may be lawfully interrogated, the [board] **de-**  
5 **partment** shall compel obedience in the manner provided in ORS 183.440.

6 (6) Notwithstanding the provisions of subsection (3) of this section:

7 (a) The [board] **department** may order the work stopped immediately if the contractor is  
8 working on a structure and the contractor was not licensed by the [board] **department** when the  
9 work began; or

10 (b) The [board] **department** may order the work stopped after 10 days' notice to the persons  
11 listed in subsection (3) of this section if the contractor is working on a structure and was licensed  
12 by the [board] **department** when the job began but has let the license lapse.

13 **SECTION 47.** ORS 701.227 is amended to read:

14 701.227. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**  
15 **Services** shall begin an action to determine whether a contractor or a subcontractor shall not be  
16 considered qualified to hold or participate in a public contract for a public improvement upon re-  
17 ceipt of information from a public contracting agency or from any person who supplied labor or  
18 materials in connection with a public contract for a public improvement indicating that the con-  
19 tractor or subcontractor has not made payment to persons who supplied labor or materials within  
20 60 days after the date when the payment was received by the contractor or subcontractor and that  
21 the payment was not a subject of a good faith dispute as defined in ORS 279C.580.

22 (2) If the [board] **department** determines after notice and opportunity for hearing that a con-  
23 tractor or a subcontractor did not make payment to persons who supplied labor or materials in  
24 connection with a public contract for a public improvement within 60 days after the date when  
25 payment was received by the contractor or subcontractor, the [board] **department** shall place the  
26 contractor or the subcontractor on the list of persons who have been determined not to be qualified  
27 to hold or participate in a public contract for a public improvement. The [board] **department** may  
28 not place a contractor or subcontractor on the list if the only reason that the contractor or sub-  
29 contractor did not make payment to a person when payment was due is that the contractor or sub-  
30 contractor did not receive payment from the public contracting agency, contractor or subcontractor  
31 when payment was due. The contractor or subcontractor shall remain on the list for a period of not  
32 less than six months.

33 (3) If the [board] **department** determines that the claim made against a contractor or subcon-  
34 tractor was made in bad faith or was false, the person filing the bad faith or false claim shall be  
35 placed on the list of persons who have been determined not to be qualified to hold or participate in  
36 a public contract for a public improvement.

37 (4) The [board] **department** shall create and maintain a list of contractors and subcontractors  
38 who have been determined not to be qualified to hold or participate in a public contract for a public  
39 improvement. The list may include any corporation, partnership or other business entity of which  
40 the contractor or subcontractor is an owner, shareholder or officer of the business or was an owner  
41 or officer of the business. The [board] **department** shall provide access to the list to all public  
42 contracting agencies, contractors and subcontractors.

43 **SECTION 48.** ORS 701.230 is amended to read:

44 701.230. At least once each month, the [*Construction Contractors Board*] **Department of Con-**  
45 **sumer and Business Services** shall provide to investigative units of the Department of Revenue,

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

4 **SECTION 49.** ORS 701.235 is amended to read:

5 701.235. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**  
 6 **Services** shall adopt rules to carry out the provisions of this chapter including, but not limited to,  
 7 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*] **department** if there is no direct  
 11 contractual relationship between the claimant and the contractor;

12 (d) Notwithstanding ORS 701.146 (7) and 701.150 (4) and subject to ORS 701.150 (6), exclude or  
 13 limit recovery from the contractor's bond required by ORS 701.085, of damages awarded by a court  
 14 or arbitrator for interest, service charges, costs and attorney fees arising from filing and proving  
 15 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*] **department** may adopt rules prescribing terms and conditions under which a  
 20 contractor may substitute a letter of credit from a bank authorized to do business in this state in-  
 21 stead of the bond requirements prescribed in ORS 701.085.

22 **SECTION 50.** ORS 701.240 is amended to read:

23 701.240. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**  
 24 **Services** shall supply the Department of Revenue and the Employment Department with a partial  
 25 or complete list of **construction contractor** licensees as deemed necessary by the [*board*] **depart-**  
 26 **ment**.

27 (2) The lists required by subsection (1) of this section shall contain the name, address, Social  
 28 Security or federal employer identification number of each licensee or such other information as the  
 29 departments may by rule require.

30 **SECTION 51.** ORS 701.250 is amended to read:

31 701.250. (1) Any individual may request and the [*Construction Contractors Board*] **Department**  
 32 **of Consumer and Business Services** shall provide notification of the status of one or more **con-**  
 33 **struction contractor** licensees. Status information provided by the [*board*] **department** shall in-  
 34 clude any professional credentials earned by the contractor as described in ORS 701.120.

35 (2) The [*board*] **department** may charge a standard fee for the notification described in sub-  
 36 section (1) of this section not to exceed the cost of preparation and provision of such notices.

37 **SECTION 52.** ORS 701.252 is amended to read:

38 701.252. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**  
 39 **vices** shall maintain and make available to the public a record of grievances made to the [*board*]  
 40 **department** against contractors that are licensed under this chapter. The [*board*] **department** shall  
 41 separately record:

42 (1) Inquiries for which no investigation has taken place;

43 (2) Claims that are being processed but upon which action has not been completed;

44 (3) Claims that have been voluntarily settled by the contractor and the claimant;

45 (4) Claims that have resulted in a final order of the [*board*] **department** to dismiss the claim;

1 and

2 (5) Claims that have resulted in a final order of the [board] **department** to require payment to  
3 the claimant.

4 **SECTION 53.** ORS 701.255 is amended to read:

5 701.255. The [Construction Contractors Board] **Department of Consumer and Business Ser-**  
6 **vices** may retain 20 percent annually from the funds collected under ORS 701.992. The amount re-  
7 tained under this section shall be continuously appropriated for the [board's] **department's** costs  
8 of collection of civil penalties imposed by order of the [board] **department**.

9 **SECTION 54.** ORS 701.260 is amended to read:

10 701.260. [(1) From within its membership, the Construction Contractors Board shall appoint three  
11 members, including one of the public members or the elected official, as an appeal committee. The board  
12 may appoint one or more appeal committees. At least one residential contractor shall be appointed to  
13 any committee that hears appeals involving residential complaints.]

14 [(2) An appeal committee] **The Director of the Department of Consumer and Business Ser-**  
15 **vices** shall hear **construction contractor** appeals on proposed orders **of the Department of**  
16 **Consumer and Business Services** and on petitions for reconsideration and rehearing and motions  
17 for stays that were originally appealed to the [board] **department** as proposed orders.

18 [(3) The Construction Contractors Board shall not consider an appeal of a decision of an appeal  
19 committee. However, the full board may act as an appeal committee. The parties affected by a decision  
20 of an appeal committee shall retain the right to appeal the decision to the Court of Appeals.]

21 **SECTION 55.** ORS 701.295 is amended to read:

22 701.295. The [Construction Contractors Board] **Department of Consumer and Business Ser-**  
23 **vices** shall investigate allegations of illegal activity in the construction industry and seek civil or  
24 criminal prosecution of illegal activity that warrants more than an administrative sanction.

25 **SECTION 56.** ORS 701.350 is amended to read:

26 701.350. (1) An individual may not undertake, offer to undertake or submit a bid to do work as  
27 a home inspector unless the individual is certified as a home inspector under this section by the  
28 [Construction Contractors Board] **Department of Consumer and Business Services** and is an  
29 owner of, or employed by, a business that is licensed by the [board] **department**.

30 (2) A business may not undertake, offer to undertake or submit a bid to do work as a home in-  
31 spector unless the business is licensed by the [board] **department** under this chapter and has an  
32 owner or an employee who is certified as a home inspector under this section.

33 (3) The [board] **department** shall adopt minimum standards of practice and professional conduct.

34 (4) The [board] **department** shall require that an applicant for certification as a home inspector  
35 pass a test demonstrating the competency of the applicant to act as a home inspector. The [board]  
36 **department**, by rule, may accept the results of competency testing by a nationally recognized cer-  
37 tification program for home inspectors. The [board] **department**, by rule, may adopt additional re-  
38 quirements for the issuance or renewal of a home inspector certificate, including but not limited to  
39 training and continuing education requirements.

40 (5) The [board] **department** by rule shall adopt procedures for the issuance, renewal and revo-  
41 cation of home inspector certification.

42 (6) The [board] **department** by rule may adopt fees necessary for the administration of this  
43 section. The fees may not exceed the following:

44 (a) \$50 for application;

45 (b) \$50 for testing; and

1 (c) \$75 for annual certificate renewal.

2 (7) This section does not apply to a person acting within the scope of a license, certificate or  
3 registration issued to the person by the Appraiser Certification and Licensure Board under ORS  
4 chapter 674.

5 **SECTION 57.** ORS 701.505 is amended to read:

6 701.505. For the purposes of ORS 431.920 and 701.500 to 701.515:

7 (1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223  
8 and as further defined pursuant to the authorities described in ORS 701.500.

9 (2) "Accredited training program" means a training program that has been accredited by the  
10 Department of Human Services to provide training for individuals engaged in lead-based paint ac-  
11 tivities.

12 (3) "Certified" means an action by the Department of Human Services verifying the successful  
13 completion of a training program accredited by the department and any other requirements.

14 (4) "Discipline" means a specific type or category of lead-based paint activity.

15 (5) "Evaluation" has the meaning given that term in P.L. 102-550, section 1004, and as further  
16 defined pursuant to the authorities described in ORS 701.500.

17 (6) "Inspection" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223  
18 and as further defined pursuant to the authorities described in ORS 701.500.

19 (7) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and as  
20 further defined pursuant to the authorities described in ORS 701.500.

21 (8) "Lead-based paint activities" has the meaning given that term in 40 C.F.R. 745.223 and as  
22 further defined pursuant to the authorities described in ORS 701.500.

23 (9) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-  
24 contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present  
25 in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human  
26 health effects as established by the appropriate federal agency.

27 (10) "Licensed" means a person who has been certified by the Department of Human Services  
28 in one or more disciplines and has completed the **construction contractor** requirements of the  
29 [*Construction Contractors Board*] **Department of Consumer and Business Services**.

30 (11) "Registered" means a person or business that has met the requirements for registration  
31 under this chapter.

32 **SECTION 58.** ORS 701.515 is amended to read:

33 701.515. (1) In accordance with any applicable provisions of ORS chapter 183, the [*Construction*  
34 *Contractors Board*] **Department of Consumer and Business Services** by rule shall establish a  
35 system to license persons and individuals in lead-based paint disciplines required to be licensed un-  
36 der ORS 701.510. Such licensing shall include disciplines and requirements described in 40 C.F.R.  
37 745.225. Such a system shall include but not be limited to provisions:

38 (a) Prescribing the form and content of the times and procedures for submitting applications for  
39 license issuance or renewal.

40 (b) Prescribing the fees for original issuance and renewal of the license in amounts that do not  
41 exceed the cost of administering the program.

42 (c) Prescribing those actions or circumstances that constitute failure to achieve or maintain li-  
43 censing requirements, or that otherwise are contrary to the public interest, for which the [*agency*]  
44 **department** may refuse to issue or renew or may suspend or revoke a license.

45 (2) In accordance with any applicable provisions of ORS chapter 183, the [*Construction Con-*



1 *tractors Board*] **department** by rule shall establish a system to register businesses that employ  
 2 persons or individuals in lead-based paint disciplines required to be licensed under ORS 701.510.  
 3 Such registration shall include the requirements described in 40 C.F.R. 745.226. Such a system shall  
 4 include but not be limited to provisions:

5 (a) Prescribing the form and content of the times and procedures for submitting applications for  
 6 registration or renewal.

7 (b) Prescribing the fees for original registration and renewal of the registration in amounts that  
 8 do not exceed the cost of administering the program.

9 (c) Prescribing those actions or circumstances that constitute failure to achieve or maintain li-  
 10 censing requirements, or that otherwise are contrary to the public interest, for which the [*agency*]  
 11 **department** may refuse to issue or renew or may suspend or revoke a license.

12 (3) The [*Construction Contractors Board*] **department** may impose the following licensing fees:

13 (a) Lead abatement contractor, up to \$50 per year;

14 (b) Lead inspection contractor, up to \$50 per year;

15 (c) Lead supervisor or lead contractor, up to \$50 per year;

16 (d) Lead inspector or assessor, up to \$50 per year; and

17 (e) Lead worker, up to \$25 per year.

18 **SECTION 59.** ORS 701.525 is amended to read:

19 701.525. (1) As used in this section and ORS 701.530:

20 (a) “Developer” means a person who contracts to construct, or arrange for the construction of,  
 21 new residential housing on behalf of, or for the purpose of selling the residential housing to, a spe-  
 22 cific individual the person knows is the purchaser of the residential housing.

23 (b) “Residential housing”:

24 (A) Means a structure designed for use as a residence and containing dwelling units for three  
 25 or fewer families.

26 (B) Means a structure that is a condominium as defined in ORS 100.005.

27 (C) Does not mean a manufactured structure as defined in ORS 446.003.

28 (2) A developer who enters into a contract to construct or arrange for the construction of new  
 29 residential housing may, at the time of providing a purchaser with a written contract, also provide  
 30 the purchaser with a list of features that may make residential housing more accessible to a person  
 31 with disabilities. The list may include the features identified in the model list of features adopted  
 32 by the [*Construction Contractors Board*] **Department of Consumer and Business Services** by rule  
 33 under ORS 701.530.

34 (3) The inclusion of a feature on the list supplied by the developer under subsection (2) of this  
 35 section does not obligate the developer to make the feature available to a purchaser. The list sup-  
 36 plied by the developer may specify for each feature whether the feature is standard, optional,  
 37 available on a limited basis or unavailable from the developer. If a listed feature is available from  
 38 the developer as an option or on a limited basis, the list of features may specify the stage of con-  
 39 struction by which the purchaser must submit to the developer any request that the residential  
 40 housing be constructed with that feature.

41 (4) This section, or the inclusion of a feature on the model list developed under ORS 701.530,  
 42 does not affect the requirement that installation of a feature comply with the state building code  
 43 or be approved under ORS 455.060.

44 **SECTION 60.** ORS 701.530 is amended to read:

45 701.530. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**

1 **vices** shall adopt by rule a model list of features recommended for inclusion in a list of features that  
 2 a developer supplies to a purchaser of residential housing under ORS 701.525. In developing the  
 3 model list of features, the [board] **department** shall solicit the comments of advocacy groups and  
 4 other organizations serving persons with disabilities.

5 **SECTION 61.** ORS 701.550 is amended to read:

6 701.550. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**  
 7 **vices** shall provide an annual notice to each contractor licensed under this chapter that informs  
 8 contractors of the rules developed by the Director of the Department of Consumer and Business  
 9 Services pursuant to ORS 455.355 prohibiting the installation of thermostats that contain mercury  
 10 and requiring proper disposal of thermostats that contain mercury.

11 **SECTION 62.** ORS 701.565 is amended to read:

12 701.565. (1) An owner may not compel arbitration or commence a court action against a con-  
 13 tractor, subcontractor or supplier to assert a claim arising out of or related to any defect in the  
 14 construction, alteration or repair of a residence or in any system, component or material incorpo-  
 15 rated into a residence located in this state unless the owner has sent that contractor, subcontractor  
 16 or supplier a notice of defect as provided in this section and has complied with ORS 701.575.

17 (2) An owner must send a notice of defect by registered mail, return receipt requested. If a no-  
 18 tice of defect is sent to a contractor or subcontractor, the owner must send the notice to the last  
 19 known address for the contractor or subcontractor as shown in the records of the [*Construction*  
 20 *Contractors Board*] **Department of Consumer and Business Services**. If a notice of defect is sent  
 21 to a supplier, the owner must send the notice to the Oregon business address of the supplier or, if  
 22 none, to the registered agent of the supplier.

23 (3) A notice of defect sent by an owner must include:

24 (a) The name and mailing address of the owner or the owner's legal representative, if any;

25 (b) A statement that the owner may seek to compel arbitration or bring a court action against  
 26 the contractor, subcontractor or supplier;

27 (c) The address and location of the affected residence;

28 (d) A description of:

29 (A) Each defect;

30 (B) The remediation the owner believes is necessary; and

31 (C) Any incidental damage not curable by remediation as described in subparagraph (B) of this  
 32 paragraph; and

33 (e) Any report or other document evidencing the existence of the defects and any incidental  
 34 damage.

35 **SECTION 63.** ORS 701.630 is amended to read:

36 701.630. (1) Performance by an original contractor, subcontractor or material supplier in ac-  
 37 cordance with the provisions of a construction contract entitles the original contractor, subcon-  
 38 tractor or material supplier to payment from the party with whom the original contractor,  
 39 subcontractor or material supplier contracts.

40 (2) If a subcontractor or material supplier has performed in accordance with the provisions of  
 41 a construction contract, the original contractor shall pay to the subcontractor or material supplier,  
 42 and each subcontractor shall pay to its subcontractors or material suppliers, the full amount re-  
 43 ceived for such subcontractor's work and for materials and products supplied based on the subcon-  
 44 tract or purchase order terms and conditions within seven days of receipt by the original contractor  
 45 or subcontractor of a progress payment or final payment. Payment is not required under this sub-

1 section unless a subcontractor or material supplier provides to the original contractor or subcon-  
 2 tractor a billing or invoice for the work performed or materials or products supplied in compliance  
 3 with the terms of the contract between the parties. Each subcontractor or material supplier must  
 4 provide an appropriate waiver of any mechanic's or materialman's lien in accordance with subcon-  
 5 tract or purchase order terms and conditions. The original contractor or subcontractor may require  
 6 that such waivers of lien be notarized.

7 (3) Any failure to reasonably account for the application or use of payments, as proven in a legal  
 8 proceeding authorized under the terms of the construction contract, may constitute grounds for  
 9 disciplinary action by the [*Construction Contractors Board*] **Department of Consumer and Busi-**  
 10 **ness Services** under ORS 701.135.

11 (4) Nothing in this section prevents an original contractor when submitting a bill or estimate  
 12 to an owner, or a subcontractor when submitting a bill or estimate to the original contractor, from  
 13 omitting from the bill estimate amounts withheld from payment to a subcontractor or material sup-  
 14 plier for:

15 (a) Unsatisfactory work progress;

16 (b) Defective construction work, materials or products not remedied;

17 (c) Disputed work, materials or products, not to exceed 150 percent of the amount in dispute;

18 (d) Failure to comply with other material provisions of the construction contract;

19 (e) Third party claims filed or reasonable evidence that such a claim will be filed;

20 (f) Failure of the subcontractor to make timely payments to subcontractors and material sup-  
 21 pliers for labor, equipment, materials and products;

22 (g) Damage to an original contractor, subcontractor or material supplier;

23 (h) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the  
 24 subcontract sum;

25 (i) A reasonable amount for retainage, as defined in ORS 701.410, that does not exceed the ac-  
 26 tual percentage allowed by the subcontract or purchase order; or

27 (j) Other items as allowed under the subcontract or purchase order terms and conditions.

28 (5) If a progress or final payment to a subcontractor or material supplier is delayed by more  
 29 than seven days after receipt of a progress or final payment by an original contractor or subcon-  
 30 tractor, the original contractor or subcontractor shall pay its subcontractor or material supplier  
 31 interest beginning on the eighth day, except during periods of time during which payment is with-  
 32 held pursuant to subsection (4) of this section, at the rate of one and one-half percent a month or  
 33 a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

34 (6) In any action, claim or arbitration brought to collect payments or interest under this section,  
 35 the prevailing party shall be awarded reasonable costs and attorney fees.

36 **SECTION 64.** ORS 701.992 is amended to read:

37 701.992. (1) Except as provided in subsections (4) and (5) of this section, any person who violates  
 38 any provision of this chapter or any rule adopted by the [*Construction Contractors Board*] **Depart-**  
 39 **ment of Consumer and Business Services** shall forfeit and pay into the General Fund of the State  
 40 Treasury a civil penalty in an amount determined by the [*board*] **department** of not more than  
 41 \$5,000 for each offense.

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

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

45 (4) The [*board*] **department** shall impose sanctions for violation of ORS 701.135 (1)(g) on both

1 the person to whom the contract is awarded and the person who awards the contract as follows:

- 2 (a) A penalty not less than \$500 nor more than \$1,000 for the first offense;
- 3 (b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;
- 4 (c) Suspension of the person’s license for six months for a third offense;
- 5 (d) Suspension of the person’s license for three years for a fourth offense; and
- 6 (e) Revocation of the person’s license for a fifth offense.

7 (5) The [board] **department** may impose a civil penalty not to exceed \$100 for each violation  
8 of ORS 87.007 (3).

9 **SECTION 65.** ORS 87.007 is amended to read:

10 87.007. (1) This section applies to a sale of the following residential property:

11 (a) A new single family residence or a single family residence where the sales price for original  
12 construction or contract price for improvements to the residence completed within three months  
13 prior to the date of the sale of the property is \$50,000 or more.

14 (b) A new condominium unit or a condominium unit where the sales price for original con-  
15 struction or contract price for improvements to the condominium unit completed within three  
16 months prior to the date of the sale of the property is \$50,000 or more. As used in this paragraph,  
17 “condominium unit” has the meaning given that term in ORS 100.005.

18 (c) A new residential building or a residential building where the sales price for original con-  
19 struction or contract price for improvements to the residential building completed within three  
20 months prior to the date of the sale of the property is \$50,000 or more. As used in this paragraph,  
21 “residential building” means a building or structure containing not more than four dwelling units  
22 capable of being used as residences or homes.

23 (2) For purposes of protecting purchasers of residential property with respect to claims of lien  
24 that arise before the date the sale of the residential property is completed but may be perfected  
25 under ORS 87.035 after the date the sale of the property is completed, when an owner of record sells  
26 residential property to a purchaser, the owner shall provide such protection by one of the following  
27 methods:

28 (a) Purchase or otherwise provide title insurance on behalf of the purchaser by a policy issued:

29 (A) Without exception for filed and unfiled claims of construction lien existing at the date of  
30 closing of the purchase; and

31 (B) On forms and at rates filed with, but not disapproved by, the Director of the Department  
32 of Consumer and Business Services.

33 (b) Retain in escrow, as defined in ORS 696.505, an amount of funds that is not less than 25  
34 percent of the sale price of the residential property. The funds shall be maintained in or released  
35 from escrow pursuant to written instructions to the escrow agent from the owner that sold the  
36 property and the purchaser. The written instructions shall provide that any claims of lien that are  
37 perfected after the date of the sale of the property and that are not paid by the owner that sold the  
38 property shall be paid upon demand by the purchaser from the amount maintained in escrow. The  
39 escrow agent shall release the unused funds from escrow to the owner that sold the property if the  
40 escrow agent receives a request from the owner that sold the property and the owner provides  
41 documentation from a title company that:

42 (A) Claims of lien have not been perfected against the property and 90 days have passed since  
43 the date that construction was completed; or

44 (B) One or more claims of lien have been perfected against the property, that 135 days have  
45 passed since the date that each such claim of lien was filed and that all such perfected claims of lien

1 have been released or waived.

2 (c) Maintain a bond or letter of credit in an amount that is not less than 25 percent of the sale  
3 price of the property. The [*Construction Contractors Board*] **Department of Consumer and Busi-**  
4 **ness Services** shall prescribe by rule the amount, terms and conditions of the bond or letter of  
5 credit to be maintained under this paragraph.

6 (d) Obtain written waivers from every person claiming a lien or liens in an aggregate amount  
7 that exceeds \$5,000 with respect to the property under ORS 87.010, 87.021 or 87.035, and provide  
8 copies of the waivers to the purchaser not later than the date the sale of the property is completed.

9 (e) Complete the sale of the residential property after the deadline for perfecting all claims of  
10 liens under ORS 87.035 with respect to the property.

11 (f) Obtain a signed written waiver from the purchaser of the residential property. The waiver  
12 shall be in a form described in ORS 87.091 and shall specify that the provisions of paragraphs (a)  
13 to (e) of this subsection do not apply to the sale of the residential property. The waiver must be  
14 printed on a form that is separate from any residential property sales contract or agreement and  
15 may be signed by the purchaser at any time after the purchaser enters into the sales contract or  
16 agreement with respect to the residential property and before closing of the transaction.

17 (3) Not later than the date the sale of the residential property is completed, the owner who sold  
18 the property shall complete, sign and deliver to the purchaser a form specifying the method that the  
19 owner has selected to comply with the requirements of subsection (2) of this section or that sub-  
20 section (2) of this section does not apply to the sale of the property. The notice shall be in a form  
21 designated by the [*Construction Contractors Board*] **Department of Consumer and Business Ser-**  
22 **vices** by rule under ORS 701.235.

23 (4) A real estate licensee, as defined in ORS 696.010, acting in the professional capacity of a  
24 licensee may not be liable in any criminal, civil or administrative proceeding arising out of the  
25 failure of an owner of record to comply with subsection (2) or (3) of this section.

26 (5) Violation of subsection (3) of this section is a Class A violation.

27 (6) In addition to any other remedy or penalty provided by law, a purchaser may bring an action  
28 to recover up to twice the amount of actual damages caused by a violation of subsection (2) of this  
29 section. The court may award to the prevailing party, in addition to costs and disbursements, rea-  
30 sonable attorney fees. Any action brought under this subsection must be commenced not later than  
31 two years after the date the sale of the property is completed.

32 (7) For purposes of subsections (5) and (6) of this section and ORS 646.608:

33 (a) It is a defense to a violation of subsection (2) or (3) of this section that there is no enforce-  
34 ment or attempted enforcement of any claim of lien against the property that is the subject of the  
35 sale arising before the date the sale of the property is completed; and

36 (b) As to any claim of lien, it is a defense to a violation of subsection (2) or (3) of this section  
37 if the owner that sold the property:

38 (A) Proves that the claim of lien against the property that is the subject of the sale is invalid;

39 or

40 (B) Satisfies the claim of lien or obtains a release from the claim of lien on the property that  
41 is the subject of the sale.

42 (8) A violation of subsection (2) or (3) of this section is not considered to have occurred with  
43 respect to a lien described in ORS 87.010 during the period that the validity of the lien is disputed  
44 in a judicial proceeding or a proceeding described in ORS chapter 701.

45 (9) Nothing in this section requires the payment of a lien that is not otherwise valid. This sec-

tion does not apply to claims of lien perfected by persons furnishing any materials, equipment, services or labor at the request of the purchaser of the residential property.

**SECTION 66.** ORS 87.023 is amended to read:

87.023. The notice of right to a lien required under ORS 87.021 shall include, but not be limited to, the following information and shall be substantially in the following form:

NOTICE OF RIGHT TO A LIEN.  
WARNING: READ THIS NOTICE.  
PROTECT YOURSELF FROM  
PAYING ANY CONTRACTOR  
OR SUPPLIER TWICE  
FOR THE SAME SERVICE.

To: \_\_\_\_\_ Date of mailing: \_\_\_\_\_

Owner

\_\_\_\_\_

Owner's address

\_\_\_\_\_

This is to inform you that \_\_\_\_\_ has begun to provide \_\_\_\_\_ (description of materials, equipment, labor or services) ordered by \_\_\_\_\_ for improvements to property you own. The property is located at \_\_\_\_\_.

A lien may be claimed for all materials, equipment, labor and services furnished after a date that is eight days, not including Saturdays, Sundays and other holidays, as defined in ORS 187.010, before this notice was mailed to you.

Even if you or your mortgage lender have made full payment to the contractor who ordered these materials or services, your property may still be subject to a lien unless the supplier providing this notice is paid.

THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the State of Oregon.

This notice has been sent to you by:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US.

IMPORTANT INFORMATION ON  
REVERSE SIDE

IMPORTANT INFORMATION

FOR YOUR PROTECTION

Under Oregon’s laws, those who work on your property or provide labor, equipment, services or materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors, material suppliers, rental equipment suppliers, service providers or laborers or neglects to make other legally required payments, the people who are owed money can look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with materials, equipment, labor or services must give you a notice of right to a lien to let you know what they have provided.

WAYS TO PROTECT

YOURSELF ARE:

- RECOGNIZE that this notice of right to a lien may result in a lien against your property unless all those supplying a notice of right to a lien have been paid.

- LEARN more about the lien laws and the meaning of this notice by contacting the [*Construction Contractors Board*] **Department of Consumer and Business Services**, an attorney or the firm sending this notice.

- ASK for a statement of the labor, equipment, services or materials provided to your property from each party that sends you a notice of right to a lien.

- WHEN PAYING your contractor for materials, equipment, labor or services, you may make checks payable jointly to the contractor and the firm furnishing materials, equipment, labor or services for which you have received a notice of right to a lien.

- OR use one of the methods suggested by the “Information Notice to Owners.” If you have not received such a notice, contact the [*Construction Contractors Board*] **Department of Consumer and Business Services**.

- GET EVIDENCE that all firms from whom you have received a notice of right to a lien have been paid or have waived the right to claim a lien against your property.

- CONSULT an attorney, a professional escrow company or your mortgage lender.

---

**SECTION 67.** ORS 87.058 is amended to read:

87.058. (1) As used in this section, [:]

[(a)] “contractor” has the meaning given that term in ORS 701.005.

[(b)] “Board” means the *Construction Contractors Board established in ORS 701.205.*

(2) When a suit to enforce a lien perfected under ORS 87.035 is filed and the owner of the structure subject to that lien files a claim that is being processed by the [*board*] **Department of Consumer and Business Services** under ORS 701.145 against a contractor who performed work on the structure, the owner may obtain a stay of proceedings on the suit to enforce the lien if:

(a) The owner already has paid the contractor for that contractor’s work that is subject to this chapter on the structure;

(b) The person suing to enforce the lien perfected under ORS 87.035:

(A) Performed work that is subject to ORS chapter 701 on the structure for the contractor who has been paid by the owner;

(B) Furnished labor, services or materials or rented or supplied equipment used on the structure to the contractor who has been paid by the owner; or

1 (C) Otherwise acquired the lien as a result of a contribution toward completion of the structure  
 2 for which the contractor has been paid by the owner; and

3 (c) The continued existence of the lien on which the suit is pending is attributable to the failure  
 4 of the contractor who has been paid by the owner to pay the person suing for that person's contri-  
 5 bution toward completion of the structure.

6 (3) The owner may petition for the stay of proceedings described in subsection (2) of this section  
 7 by filing the following papers in the circuit court in which the suit on the lien is pending:

8 (a) A certified copy of the claim filed for processing by the [board] **department** under ORS  
 9 701.145; and

10 (b) An affidavit signed by the owner that contains:

11 (A) A description of the structure;

12 (B) The street address of the structure;

13 (C) A statement that the structure is the structure upon which the suit to enforce the lien is  
 14 pending; and

15 (D) A statement that the petitioner is the owner of the structure.

16 (4) Upon receipt of a complete petition described in subsection (3) of this section, the circuit  
 17 court shall stay proceedings on the suit to enforce the lien.

18 (5) After the [board] **department** order on the claim becomes final and the [board] **department**  
 19 issues any required notice for payment against the contractor's bond or deposit, the circuit court  
 20 shall dissolve the stay ordered under subsection (4) of this section.

21 **SECTION 68.** ORS 87.093 is amended to read:

22 87.093. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**  
 23 **Services** shall adopt by rule a form entitled "Information Notice to Owner" which shall describe,  
 24 in nontechnical language and in a clear and coherent manner using words in their common and  
 25 everyday meanings, the pertinent provisions of the Construction Lien Law of this state and the  
 26 rights and responsibilities of an owner of property and an original contractor under that law. The  
 27 rights and responsibilities described in the form shall include, but not be limited to:

28 (a) Methods by which an owner may avoid multiple payments for the same materials and labor;

29 (b) The right to file a claim against a licensed contractor with the [*Construction Contractors*  
 30 *Board*] **department** and, when appropriate, to be reimbursed from the contractor's bond filed under  
 31 ORS chapter 701; and

32 (c) The right to receive, upon written request therefor, a statement of the reasonable value of  
 33 materials, equipment, services or labor provided from the persons providing the materials, equip-  
 34 ment, services or labor at the request of an original contractor and who have also provided notices  
 35 of right to a lien.

36 (2)(a) Each original contractor shall provide a copy of the "Information Notice to Owner"  
 37 adopted by the [*Construction Contractors Board*] **department** under this section to:

38 (A) The first purchaser of residential property constructed by the contractor and sold before or  
 39 within the 75-day period immediately following the completion of construction; and

40 (B) The owner or an agent of the owner, other than an original contractor, at the time of signing  
 41 a written residential construction or improvement contract with the owner.

42 (b) When the residential construction or improvement contract is an oral contract, the original  
 43 contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five  
 44 days after the contract is made.

45 (3) This section applies only to a residential construction or improvement contract for which the



1 aggregate contract price exceeds \$1,000. If the price of a home improvement contract was initially  
 2 less than \$1,000, but during the course of the performance of the contract exceeds that amount, the  
 3 original contractor shall mail or otherwise deliver the “Information Notice to Owner” not later than  
 4 five days after the contractor knows or should reasonably know that the contract price will exceed  
 5 \$1,000.

6 (4) An “Information Notice to Owner” need not be sent when the owner is a contractor licensed  
 7 with the [*Construction Contractors Board*] **department** under ORS chapter 701.

8 (5) Notwithstanding ORS 87.010, if an original contractor does not provide an owner or agent  
 9 with an “Information Notice to Owner” as required under subsections (2) and (3) of this section, the  
 10 original contractor may not claim any lien created under ORS 87.010 upon any improvement, lot or  
 11 parcel of land of the owner for labor, services or materials supplied under the residential con-  
 12 struction or improvement contract for which the “Information Notice to Owner” was not provided.

13 (6) If an original contractor does not provide an owner or agent with an “Information Notice  
 14 to Owner” as required under subsection (2) of this section, the [*Construction Contractors Board*]  
 15 **department** may suspend the license of the original contractor for any period of time that the  
 16 [*board*] **department** considers appropriate or impose a civil penalty of not more than \$5,000 upon  
 17 the original contractor as provided in ORS 701.992.

18 (7) As used in this section:

19 (a) “Residential construction or improvement” means the original construction of residential  
 20 property and constructing, repairing, remodeling or altering residential property and includes, but  
 21 is not limited to, the construction, repair, replacement or improvement of driveways, swimming  
 22 pools, terraces, patios, fences, porches, garages, basements and other structures or land adjacent to  
 23 a residential dwelling.

24 (b) “Residential construction or improvement contract” means an agreement, oral or written,  
 25 between an original contractor and an owner for the performance of a home improvement and in-  
 26 cludes all labor, services and materials furnished and performed thereunder.

27 **SECTION 69.** ORS 183.530 is amended to read:

28 183.530. A housing cost impact statement shall be prepared upon the proposal for adoption or  
 29 repeal of any rule or any amendment to an existing rule by:

30 (1) The State Housing Council;

31 (2) A building codes division of the Department of Consumer and Business Services or any board  
 32 associated with the department with regard to rules adopted under ORS 455.610 to 455.630;

33 (3) The Land Conservation and Development Commission;

34 (4) The Environmental Quality Commission;

35 (5) The [*Construction Contractors Board*] **Department of Consumer and Business Services**  
 36 **with regard to rules for the administration and enforcement of ORS chapter 701;**

37 (6) The Occupational Safety and Health Division of the Department of Consumer and Business  
 38 Services; or

39 (7) The State Department of Energy.

40 **SECTION 70.** ORS 205.125 is amended to read:

41 205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the fol-  
 42 lowing information for each order or warrant recorded:

43 (a) The name of any person subject to the order or warrant.

44 (b) The name of the officer and the agency that issued the order or warrant or, **for an order**  
 45 **of the Department of Consumer and Business Services**, the name of the claimant in whose favor

1 an order of the [*Construction Contractors Board*] **department** or State Landscape Contractors Board  
 2 has been given. The name of the agency or board that issued the order or warrant must be clearly  
 3 printed on the order or warrant.

4 (c) The amount of any monetary obligation imposed by the order or warrant, and the name of  
 5 all persons against whom the obligation is imposed.

6 (d) The date on which the order or warrant was received and recorded.

7 (e) Full or partial satisfaction, if any, of any lien claim created by the order or warrant.

8 (f) County Clerk Lien Record instruments filed under ORS 205.130 (3)(c)(A) shall be on official  
 9 letterhead and include the seals, if any, of the officers and agencies.

10 (g) Such other information as may be considered necessary by the county clerk.

11 (2) From the date that an order or warrant is recorded in the County Clerk Lien Record, the  
 12 order or warrant shall have the attributes and effect of a judgment that has been entered in the  
 13 register of the circuit court for that county, including but not limited to the creation of a judgment  
 14 lien for any monetary obligation in favor of the officer or agency issuing the order or warrant or  
 15 in favor of the claimant in the proceedings before the [*Construction Contractors Board*] **department**  
 16 or State Landscape Contractors Board, renewal and enforcement by supplementary proceedings,  
 17 writs of execution, notices of garnishment and writs of garnishment.

18 (3) From the date that an order or warrant imposing a monetary obligation is recorded in the  
 19 County Clerk Lien Record, the order or warrant becomes a lien upon the title to and interest in  
 20 property of the person against whom it is issued in the same manner as a judgment that creates a  
 21 judgment lien under ORS chapter 18.

22 (4) In addition to any other remedy provided by law, orders and warrants recorded in the County  
 23 Clerk Lien Record may be enforced as provided in ORS 205.126.

24 **SECTION 71.** ORS 205.126 is amended to read:

25 205.126. (1) At any time after recording an order or warrant in the County Clerk Lien Record,  
 26 a claimant or an attorney for an agency or claimant may file in the circuit court for the county  
 27 where the order or warrant is recorded, a copy of the original order or warrant certified by the  
 28 agency to be a true copy of original, and an affidavit of the claimant or attorney verifying that the  
 29 order or warrant was recorded in the County Clerk Lien Record for that county, the date that the  
 30 order or warrant was recorded and the date on which any notice of renewal was recorded under  
 31 subsection (2) of this section. Subject to any other requirements that may apply to the enforcement  
 32 remedy sought by the agency or claimant, proceedings may thereafter be commenced by the agency  
 33 or claimant for the enforcement of the order or warrant, in the same manner as provided for the  
 34 enforcement of judgments issued by a court. Enforcement proceedings may include:

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

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

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

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

44 (a) The name of the agency that issued the warrant or order or, **for an order of the Depart-**  
 45 **ment of Consumer and Business Services** the name of the claimant in whose favor an order of

1 the [*Construction Contractors Board*] **Department of Consumer and Business Services** or State  
 2 Landscape Contractors Board has been given;

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

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

7 (3) For the purposes of this section:

8 (a) “Agency” means any state officer, board, commission, corporation, institution, department  
 9 or other state body that has authority to record an order or warrant in the County Clerk Lien Re-  
 10 cord.

11 (b) “Claimant” means a person in favor of which a board **or department** order has been re-  
 12 corded under the provisions of ORS 671.707 or 701.150.

13 **SECTION 72.** ORS 279A.010 is amended to read:

14 279A.010. (1) As used in the Public Contracting Code, unless the context or a specifically ap-  
 15 plicable definition requires otherwise:

16 (a) “Bidder” means a person that submits a bid in response to an invitation to bid.

17 (b) “Contracting agency” means a public body authorized by law to conduct a procurement.  
 18 “Contracting agency” includes, but is not limited to, the Director of the Oregon Department of Ad-  
 19 ministrative Services and any person authorized by a contracting agency to conduct a procurement  
 20 on the contracting agency’s behalf. “Contracting agency” does not include the judicial department  
 21 or the legislative department.

22 (c) “Days” means calendar days.

23 (d) “Department” means the Oregon Department of Administrative Services.

24 (e) “Director” means the Director of the Oregon Department of Administrative Services or a  
 25 person designated by the director to carry out the authority of the director under the Public Con-  
 26 tracting Code.

27 (f) “Emergency” means circumstances that:

28 (A) Could not have been reasonably foreseen;

29 (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat  
 30 to property, public health, welfare or safety; and

31 (C) Require prompt execution of a contract to remedy the condition.

32 (g) “Energy savings performance contract” means a public contract between a contracting  
 33 agency and a qualified energy service company for the identification, evaluation, recommendation,  
 34 design and construction of energy conservation measures, including a design-build contract, that  
 35 guarantee energy savings or performance.

36 (h) “Executive department” has the meaning given that term in ORS 174.112.

37 (i)(A) “Grant” means:

38 (i) An agreement under which a contracting agency receives moneys, property or other assist-  
 39 ance, including but not limited to federal assistance that is characterized as a grant by federal law  
 40 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other  
 41 assets, from a grantor for the purpose of supporting or stimulating a program or activity of the  
 42 contracting agency and in which no substantial involvement by the grantor is anticipated in the  
 43 program or activity other than involvement associated with monitoring compliance with the grant  
 44 conditions; or

45 (ii) An agreement under which a contracting agency provides moneys, property or other assist-

1 ance, including but not limited to federal assistance that is characterized as a grant by federal law  
 2 or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other  
 3 assets, to a recipient for the purpose of supporting or stimulating a program or activity of the re-  
 4 cipient and in which no substantial involvement by the contracting agency is anticipated in the  
 5 program or activity other than involvement associated with monitoring compliance with the grant  
 6 conditions.

7 (B) "Grant" does not include a public contract for a public improvement, for public works, as  
 8 defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair or mainte-  
 9 nance necessary to preserve a public improvement, when under the public contract a contracting  
 10 agency pays, in consideration for contract performance intended to realize or to support the real-  
 11 ization of the purposes for which grant funds were provided to the contracting agency, moneys that  
 12 the contracting agency has received under a grant.

13 (j) "Industrial oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working  
 14 oil or refrigeration oil.

15 (k) "Judicial department" has the meaning given that term in ORS 174.113.

16 (L) "Legislative department" has the meaning given that term in ORS 174.114.

17 (m) "Local contract review board" means a local contract review board described in ORS  
 18 279A.060.

19 (n) "Local contracting agency" means a local government or special government body authorized  
 20 by law to conduct a procurement. "Local contracting agency" includes any person authorized by a  
 21 local contracting agency to conduct a procurement on behalf of the local contracting agency.

22 (o) "Local government" has the meaning given that term in ORS 174.116.

23 (p) "Lowest responsible bidder" means the lowest bidder who:

24 (A) Has substantially complied with all prescribed public contracting procedures and require-  
 25 ments;

26 (B) Has met the standards of responsibility set forth in ORS 279B.110 or 279C.375;

27 (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or  
 28 279C.440; and

29 (D) If the advertised contract is a public improvement contract, is not on the list created by the  
 30 [*Construction Contractors Board*] **Department of Consumer and Business Services** under ORS  
 31 701.227.

32 (q) "Lubricating oil" means any oil intended for use in an internal combustion crankcase,  
 33 transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equip-  
 34 ment or machinery powered by an internal combustion engine.

35 (r) "Person" means a natural person capable of being legally bound, a sole proprietorship, a  
 36 corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-  
 37 profit or nonprofit unincorporated association, a business trust, two or more persons having a joint  
 38 or common economic interest, any other person with legal capacity to contract or a public body.

39 (s) "Post-consumer waste" means a finished material that would normally be disposed of as solid  
 40 waste, having completed its life cycle as a consumer item. "Post-consumer waste" does not include  
 41 manufacturing waste.

42 (t) "Price agreement" means a public contract for the procurement of goods or services at a set  
 43 price with:

44 (A) No guarantee of a minimum or maximum purchase; or

45 (B) An initial order or minimum purchase combined with a continuing contractor obligation to

1 provide goods or services in which the contracting agency does not guarantee a minimum or maxi-  
2 mum additional purchase.

3 (u) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring goods  
4 or services. "Procurement" includes each function and procedure undertaken or required to be  
5 undertaken by a contracting agency to enter into a public contract, administer a public contract and  
6 obtain the performance of a public contract under the Public Contracting Code.

7 (v) "Proposer" means a person that submits a proposal in response to a request for proposals.

8 (w) "Public body" has the meaning given that term in ORS 174.109.

9 (x) "Public contract" means a sale or other disposal, or a purchase, lease, rental or other ac-  
10 quisition, by a contracting agency of personal property, services, including personal services, public  
11 improvements, public works, minor alterations, or ordinary repair or maintenance necessary to pre-  
12 serve a public improvement. "Public contract" does not include grants.

13 (y) "Public contracting" means procurement activities described in the Public Contracting Code  
14 relating to obtaining, modifying or administering public contracts or price agreements.

15 (z) "Public Contracting Code" or "code" means ORS chapters 279A, 279B and 279C.

16 (aa) "Public improvement" means a project for construction, reconstruction or major renovation  
17 on real property by or for a contracting agency. "Public improvement" does not include:

18 (A) Projects for which no funds of a contracting agency are directly or indirectly used, except  
19 for participation that is incidental or related primarily to project design or inspection; or

20 (B) Emergency work, minor alteration, ordinary repair or maintenance necessary to preserve a  
21 public improvement.

22 (bb) "Public improvement contract" means a public contract for a public improvement. "Public  
23 improvement contract" does not include a public contract for emergency work, minor alterations,  
24 or ordinary repair or maintenance necessary to preserve a public improvement.

25 (cc) "Recycled material" means any material that would otherwise be a useless, unwanted or  
26 discarded material except for the fact that the material still has useful physical or chemical prop-  
27 erties after serving a specific purpose and can, therefore, be reused or recycled.

28 (dd) "Recycled oil" means used oil that has been prepared for reuse as a petroleum product by  
29 refining, rerefining, reclaiming, reprocessing or other means, provided that the preparation or use  
30 is operationally safe, environmentally sound and complies with all laws and regulations.

31 (ee) "Recycled paper" means a paper product with not less than:

32 (A) Fifty percent of its fiber weight consisting of secondary waste materials; or

33 (B) Twenty-five percent of its fiber weight consisting of post-consumer waste.

34 (ff) "Recycled PETE" means post-consumer polyethylene terephthalate material.

35 (gg) "Recycled product" means all materials, goods and supplies, not less than 50 percent of the  
36 total weight of which consists of secondary and post-consumer waste with not less than 10 percent  
37 of its total weight consisting of post-consumer waste. "Recycled product" includes any product that  
38 could have been disposed of as solid waste, having completed its life cycle as a consumer item, but  
39 otherwise is refurbished for reuse without substantial alteration of the product's form.

40 (hh) "Secondary waste materials" means fragments of products or finished products of a manu-  
41 facturing process that has converted a virgin resource into a commodity of real economic value.  
42 "Secondary waste materials" includes post-consumer waste. "Secondary waste materials" does not  
43 include excess virgin resources of the manufacturing process. For paper, "secondary waste  
44 materials" does not include fibrous waste generated during the manufacturing process such as fibers  
45 recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips,

- 1 sawdust or other wood residue from a manufacturing process.
- 2 (ii) “Special government body” has the meaning given that term in ORS 174.117.
- 3 (jj) “State agency” means the executive department, except the Secretary of State and the State
- 4 Treasurer in the performance of the duties of their constitutional offices.
- 5 (kk) “State contracting agency” means an executive department entity authorized by law to
- 6 conduct a procurement.
- 7 (LL) “State government” has the meaning given that term in ORS 174.111.
- 8 (mm) “Used oil” has the meaning given that term in ORS 459A.555.
- 9 (nn) “Virgin oil” means oil that has been refined from crude oil and that has not been used or
- 10 contaminated with impurities.
- 11 (2) Other definitions appearing in the Public Contracting Code and the sections in which they
- 12 appear are:
- 13
- 14 (a) “Adequate” .....ORS 279C.305
- 15 (b) “Administering contracting
- 16 agency” .....ORS 279A.200
- 17 (c) “Affirmative action” .....ORS 279A.100
- 18 (d) “Architect” .....ORS 279C.100
- 19 (e) “Architectural, engineering
- 20 and land surveying
- 21 services” .....ORS 279C.100
- 22 (f) “Bid documents” .....ORS 279C.400
- 23 (g) “Bidder” .....ORS 279B.415
- 24 (h) “Bids” .....ORS 279C.400
- 25 (i) “Brand name” .....ORS 279B.405
- 26 (j) “Brand name or equal
- 27 specification” .....ORS 279B.200
- 28 (k) “Brand name
- 29 specification” .....ORS 279B.200
- 30 (L) “Class special
- 31 procurement” .....ORS 279B.085
- 32 (m) “Consultant” .....ORS 279C.115
- 33 (n) “Contract-specific
- 34 special procurement” .....ORS 279B.085
- 35 (o) “Cooperative
- 36 procurement” .....ORS 279A.200
- 37 (p) “Cooperative procurement
- 38 group” .....ORS 279A.200
- 39 (q) “Donee” .....ORS 279A.250
- 40 (r) “Engineer” .....ORS 279C.100
- 41 (s) “Findings” .....ORS 279C.330
- 42 (t) “Fire protection
- 43 equipment” .....ORS 279A.190
- 44 (u) “Fringe benefits” .....ORS 279C.800
- 45 (v) “Funds of a public

1		agency”.....ORS 279C.810
2	(w)	“Good cause”.....ORS 279C.585
3	(x)	“Good faith dispute” .....ORS 279C.580
4	(y)	“Goods” .....ORS 279B.115
5	(z)	“Goods and services” or
6		“goods or services” .....ORS 279B.005
7	(aa)	“Interstate cooperative
8		procurement” .....ORS 279A.200
9	(bb)	“Invitation to bid” .....ORS 279B.005
10		.....and 279C.400
11	(cc)	“Joint cooperative
12		procurement” .....ORS 279A.200
13	(dd)	“Labor dispute” .....ORS 279C.650
14	(ee)	“Land surveyor” .....ORS 279C.100
15	(ff)	“Legally flawed” .....ORS 279B.405
16	(gg)	“Locality” .....ORS 279C.800
17	(hh)	“Nonprofit
18		organization”.....ORS 279C.810
19	(ii)	“Nonresident bidder” .....ORS 279A.120
20	(jj)	“Not-for-profit
21		organization” .....ORS 279A.250
22	(kk)	“Original contract” .....ORS 279A.200
23	(LL)	“Permissive cooperative
24		procurement” .....ORS 279A.200
25	(mm)	“Person” .....ORS 279C.500
26		.....and 279C.815
27	(nn)	“Personal services” .....ORS 279C.100
28	(oo)	“Prevailing rate of
29		wage” .....ORS 279C.800
30	(pp)	“Procurement
31		description” .....ORS 279B.005
32	(qq)	“Property” .....ORS 279A.250
33	(rr)	“Public agency”.....ORS 279C.800
34	(ss)	“Public contract”.....ORS 279A.190
35	(tt)	“Public contract for
36		goods or services” .....ORS 279B.005
37	(uu)	“Public works” .....ORS 279C.800
38	(vv)	“Purchasing contracting
39		agency” .....ORS 279A.200
40	(ww)	“Regularly organized fire
41		department” .....ORS 279A.190
42	(xx)	“Related services” .....ORS 279C.100
43	(yy)	“Request for proposals” ORS 279B.005
44	(zz)	“Resident bidder” .....ORS 279A.120
45	(aaa)	“Responsible bidder” .....ORS 279A.105

- 1 .....and 279B.005
- 2 (bbb) “Responsible proposer” .ORS 279B.005
- 3 (ccc) “Responsive bid” .....ORS 279B.005
- 4 (ddd) “Responsive proposal” ...ORS 279B.005
- 5 (eee) “Retainage” .....ORS 279C.550
- 6 (fff) “Special procurement”...ORS 279B.085
- 7 (ggg) “Specification” .....ORS 279B.200
- 8 (hhh) “State agency” .....ORS 279A.250
- 9 (iii) “Substantial
- 10 completion” .....ORS 279C.465
- 11 (jjj) “Surplus property” .....ORS 279A.250
- 12 (kkk) “Unnecessarily
- 13 restrictive” .....ORS 279B.405

14 **SECTION 73.** ORS 279C.365 is amended to read:

15 279C.365. (1) A contracting agency preparing solicitation documents for a public improvement  
 16 contract shall, at a minimum, include:

- 17 (a) The public improvement project;
- 18 (b) The office where the specifications for the project may be reviewed;
- 19 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class  
 20 or classes of work for which bidders must be prequalified if prequalification is a requirement;
- 21 (d) The date and time after which bids will not be received, which must be at least five days  
 22 after the date of the last publication of the advertisement, and may, in the sole discretion of the  
 23 contracting agency, direct or permit the submission and receipt of bids by electronic means;
- 24 (e) The name and title of the person designated for receipt of bids;
- 25 (f) The date, time and place that the contracting agency will publicly open the bids;
- 26 (g) A statement that, if the contract is for a public works subject to ORS 279C.800 to 279C.870  
 27 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the contracting  
 28 agency unless the bid contains a statement by the bidder that ORS 279C.840 or 40 U.S.C. 276a will  
 29 be complied with;
- 30 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined  
 31 in ORS 279A.120;
- 32 (i) A statement that the contracting agency may reject any bid not in compliance with all pre-  
 33 scribed public contracting procedures and requirements and may reject for good cause all bids upon  
 34 a finding of the agency that it is in the public interest to do so;
- 35 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS  
 36 468A.720; and
- 37 (k) A statement that a bid for a public improvement contract may not be received or considered  
 38 by the contracting agency unless the bidder is licensed by the [*Construction Contractors Board*]  
 39 **Department of Consumer and Business Services** or the State Landscape Contractors Board.
- 40 (2) All bids made to the contracting agency under ORS 279C.335 or 279C.400 must be:
  - 41 (a) In writing;
  - 42 (b) Filed with the person designated for receipt of bids by the contracting agency; and
  - 43 (c) Opened publicly by the contracting agency immediately after the deadline for submission of  
 44 bids.
- 45 (3) After having been opened, the bids must be made available for public inspection.



1 (4) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS  
2 706.008, cashier’s check or certified check of each bidder shall be submitted with or posted for all  
3 bids as bid security unless the contract for which a bid is submitted has been exempted from this  
4 requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the  
5 contract.

6 (5) Subsection (4) of this section applies only to public improvement contracts with a value, es-  
7 timated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways,  
8 bridges and other transportation projects, more than \$50,000.

9 **SECTION 74.** ORS 279C.375 is amended to read:

10 279C.375. (1) After bids are opened and a determination is made that a public improvement  
11 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible  
12 bidder.

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

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

21 (a) Check the list created by the [*Construction Contractors Board*] **Department of Consumer**  
22 **and Business Services** under ORS 701.227 for bidders who are not qualified to hold a public im-  
23 provement contract.

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

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

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

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

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

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

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

42 \_\_\_\_\_

43 \_\_\_\_\_

44 **RESPONSIBILITY DETERMINATION FORM**

45 Project Name: \_\_\_\_\_

1 Bid Number: \_\_\_\_\_  
 2 Business Entity Name: \_\_\_\_\_  
 3 [CCB] **Construction Contractor** License Number: \_\_\_\_\_  
 4 Form Submitted By (Contracting Agency): \_\_\_\_\_  
 5 Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_  
 6 Title: \_\_\_\_\_  
 7 Date: \_\_\_\_\_

8 (The contracting agency must submit this form with attachments, if any, to the [*Construction*  
 9 *Contractors Board*]**Department of Consumer and Business Services** within 30 days after the date  
 10 of contract award.)

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

12  Checked the list created by the  
 13 [*Construction Contractors Board*]  
 14 **Department of Consumer and Business**  
 15 **Services** under ORS 701.227 for bidders  
 16 who are not qualified to hold a public  
 17 improvement contract.

18  Determined whether the bidder has  
 19 met the standards of responsibility.  
 20 In so doing, the contracting agency  
 21 has considered whether the bidder:

22  Has available the appropriate  
 23 financial, material, equipment,  
 24 facility and personnel resources  
 25 and expertise, or the ability to  
 26 obtain the resources and expertise,  
 27 necessary to meet all contractual  
 28 responsibilities.

29  Has a satisfactory record of  
 30 performance.

31  Has a satisfactory record of  
 32 integrity.

33  Is qualified legally to contract with  
 34 the contracting agency.

35  Has supplied all necessary  
 36 information in connection with the  
 37 inquiry concerning responsibility.

38  Determined the bidder to be  
 39 (check one of the following):

40  Responsible under ORS 279C.375  
 41 (3)(a) and (b).

42  Not responsible under ORS 279C.375  
 43 (3)(a) and (b).

44 (Attach documentation if the contracting agency finds the bidder not to be responsible.)  
 45 \_\_\_\_\_

1  
2 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the  
3 [*Construction Contractors Board*] **Department of Consumer and Business Services** within 30 days  
4 after the date the contracting agency awards the contract.

5 (4) The successful bidder shall:

6 (a) Promptly execute a formal contract; and

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

9 **SECTION 75.** ORS 279C.375, as amended by section 18, chapter 103, Oregon Laws 2005, is  
10 amended to read:

11 279C.375. (1) After bids are opened and a determination is made that a public improvement  
12 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible  
13 bidder.

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

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

22 (a) Check the list created by the [*Construction Contractors Board*] **Department of Consumer**  
23 **and Business Services** under ORS 701.227 for bidders who are not qualified to hold a public im-  
24 provement contract.

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

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

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

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

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

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

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

43 \_\_\_\_\_  
44  
45 RESPONSIBILITY DETERMINATION FORM

1 Project Name: \_\_\_\_\_  
 2 Bid Number: \_\_\_\_\_  
 3 Business Entity Name: \_\_\_\_\_  
 4 [CCB] **Construction Contractor** License Number: \_\_\_\_\_  
 5 Form Submitted By (Contracting Agency): \_\_\_\_\_  
 6 Form Submitted By (Contracting Agency Representative's Name): \_\_\_\_\_  
 7 Title: \_\_\_\_\_  
 8 Date: \_\_\_\_\_

9 (The contracting agency must submit this form with attachments, if any, to the [Construction  
 10 Contractors Board] **Department of Consumer and Business Services** within 30 days after the date  
 11 of contract award.)

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

13  Checked the list created by the  
 14 [Construction Contractors Board]  
 15 **Department of Consumer and Business**  
 16 **Services** under ORS 701.227 for bidders  
 17 who are not qualified to hold a public  
 18 improvement contract.

19  Determined whether the bidder has  
 20 met the standards of responsibility.  
 21 In so doing, the contracting agency  
 22 has considered whether the bidder:

23  Has available the appropriate  
 24 financial, material, equipment,  
 25 facility and personnel resources  
 26 and expertise, or the ability to  
 27 obtain the resources and expertise,  
 28 necessary to meet all contractual  
 29 responsibilities.

30  Has a satisfactory record of  
 31 performance.

32  Has a satisfactory record of  
 33 integrity.

34  Is qualified legally to contract with  
 35 the contracting agency.

36  Has supplied all necessary  
 37 information in connection with the  
 38 inquiry concerning responsibility.

39  Determined the bidder to be  
 40 (check one of the following):

41  Responsible under ORS 279C.375  
 42 (3)(a) and (b).

43  Not responsible under ORS 279C.375  
 44 (3)(a) and (b).

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

1  
2  
3 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the  
4 [*Construction Contractors Board*] **Department of Consumer and Business Services** within 30 days  
5 after the date the contracting agency awards the contract.

6 (4) The successful bidder shall:

7 (a) Promptly execute a formal contract; and

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

10 **SECTION 76.** ORS 279C.400 is amended to read:

11 279C.400. (1) When authorized or required by an exemption granted under ORS 279C.335, a  
12 contracting agency may award a public improvement contract by competitive proposals. A contract  
13 awarded under this section may be amended only in accordance with rules adopted under ORS  
14 279A.065.

15 (2) Except as provided in ORS 279C.330 to 279C.355, 279C.360 to 279C.390, 279C.395 and 279C.430  
16 to 279C.450, competitive proposals shall be subject to the following requirements of competitive  
17 bidding:

18 (a) Advertisement under ORS 279C.360;

19 (b) Requirements for solicitation documents under ORS 279C.365;

20 (c) Disqualification due to a [*Construction Contractors Board*] **Department of Consumer and  
21 Business Services** listing as described in ORS 279C.375 (3)(a);

22 (d) Contract execution and bonding requirements under ORS 279C.375 and 279C.380;

23 (e) Determination of responsibility under ORS 279C.375 (3)(b);

24 (f) Rejection of bids under ORS 279C.395; and

25 (g) Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

26 (3) For the purposes of applying the requirements listed in subsection (2) of this section to  
27 competitive proposals, when used in the sections listed in subsection (2) of this section, “bids” in-  
28 cludes proposals, and “bid documents” and “invitation to bid” include requests for proposals.

29 (4) Competitive proposals are not subject to the following requirements of competitive bidding:

30 (a) First-tier subcontractor disclosure under ORS 279C.370; and

31 (b) Reciprocal preference under ORS 279A.120.

32 (5) When award of a public improvement contract advertised by the issuance of a request for  
33 proposals may be made without negotiation, the contracting agency may require proposal security  
34 that serves the same function with respect to proposals as bid security serves with respect to bids  
35 under ORS 279C.365 (4) and 279C.385, as follows:

36 (a) The contracting agency may require proposal security in a form and amount as may be de-  
37 termined to be reasonably necessary or prudent to protect the interests of the contracting agency.

38 (b) The contracting agency shall retain the proposal security if a proposer who is awarded a  
39 contract fails to promptly and properly execute the contract and provide any required bonds or in-  
40 surance.

41 (c) The contracting agency shall return the proposal security to all proposers upon the exe-  
42 cution of the contract, or earlier in the selection process.

43 (6) In all other respects, and subject to rules adopted under ORS 279A.065, references in this  
44 chapter to invitations to bid, bids or bidders shall, to the extent practicable within the proposal  
45 process, be deemed equally applicable to requests for proposals, proposals or proposers. However,

1 notwithstanding ORS 279C.375 (1), a contracting agency may not be required to award a contract  
 2 advertised under the competitive proposal process based on price, but may award the contract in  
 3 accordance with ORS 279C.410 (8).

4 **SECTION 77.** ORS 279C.440 is amended to read:

5 279C.440. (1)(a) A contracting agency may disqualify a person from consideration for award of  
 6 the contracting agency's contracts for the reasons listed in subsection (2) of this section after pro-  
 7 viding the person with notice and a reasonable opportunity to be heard.

8 (b) In lieu of the disqualification process described in paragraph (a) of this subsection, a con-  
 9 tracting agency contracting for a public improvement may petition the [*Construction Contractors*  
 10 *Board*] **Department of Consumer and Business Services** to disqualify a person from consideration  
 11 for award of the contracting agency's public improvement contracts for the reasons listed in sub-  
 12 section (2) of this section. The [*Construction Contractors Board*] **department** shall provide the per-  
 13 son with notice and a reasonable opportunity to be heard.

14 (c) A contracting agency or the [*Construction Contractors Board*] **department** may not disqualify  
 15 a person under this section for a period of more than three years.

16 (2) A person may be disqualified from consideration for award of a contracting agency's con-  
 17 tracts for any of the following reasons:

18 (a) The person has been convicted of a criminal offense as an incident in obtaining or attempting  
 19 to obtain a public or private contract or subcontract, or in the performance of such contract or  
 20 subcontract.

21 (b) The person has been convicted under state or federal statutes of embezzlement, theft, forgery,  
 22 bribery, falsification or destruction of records, receiving stolen property or any other offense indi-  
 23 cating a lack of business integrity or business honesty that currently, seriously and directly affects  
 24 the person's responsibility as a contractor.

25 (c) The person has been convicted under state or federal antitrust statutes.

26 (d) The person has committed a violation of a contract provision that is regarded by the con-  
 27 tracting agency or the [*Construction Contractors Board*] **department** to be so serious as to justify  
 28 disqualification. A violation may include but is not limited to a failure to perform the terms of a  
 29 contract or an unsatisfactory performance in accordance with the terms of the contract. However,  
 30 a failure to perform or an unsatisfactory performance caused by acts beyond the control of the  
 31 contractor may not be considered to be a basis for disqualification.

32 (e) The person does not carry workers' compensation or unemployment insurance as required  
 33 by statute.

34 (3) A contracting agency or the [*Construction Contractors Board*] **department** shall issue a  
 35 written decision to disqualify a person under this section. The decision shall:

36 (a) State the reasons for the action taken; and

37 (b) Inform the disqualified person of the appeal right of the person under:

38 (A) ORS 279C.445 and 279C.450 if the decision to disqualify was issued by a contracting agency;

39 or

40 (B) ORS chapter 183 if the decision to disqualify was issued by the [*Construction Contractors*  
 41 *Board*] **department**.

42 (4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise  
 43 furnished immediately to the disqualified person.

44 **SECTION 78.** ORS 701.105 is amended to read:

45 701.105. (1) Except as provided in subsection (2) of this section, a contractor who possesses a

1 license as required under this chapter shall have in effect public liability, personal injury and  
 2 property damage insurance covering the work of the contractor that is subject to this chapter, for  
 3 an amount not less than:

- 4 (a) \$500,000 for a general contractor or licensed developer.
- 5 (b) \$300,000 for a residential-only specialty contractor.
- 6 (c) \$500,000 for all other specialty contractors.
- 7 (d) \$100,000 for a limited contractor.
- 8 (e) \$300,000 for an inspector.

9 (2) The [*Construction Contractors Board by rule, in consultation with the*] Department of Con-  
 10 sumer and Business Services, **by rule**, may allow a general or specialty contractor that is a  
 11 residential-only contractor to provide an alternative form of security approved by the [*board*] **de-**  
 12 **partment** instead of procuring a public liability, personal injury and property damage insurance  
 13 policy. The [*board*] **department** may approve an alternative form of security if the [*board*] **depart-**  
 14 **ment** determines that the alternative form of security provides protection to the public equivalent  
 15 to the protection provided by an insurance policy in the amounts otherwise applicable to the  
 16 residential-only contractor under subsection (1) of this section. A [*board-approved*] **department-**  
 17 **approved** alternative form of security may consist of a combination of financial resources.

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

23 (4) The contractor shall provide satisfactory evidence to the [*board*] **department** at the time  
 24 of licensure and renewal that the insurance policy or [*board-approved*] **department-approved** al-  
 25 ternative form of security required by this section has been procured and is in effect.

26 **SECTION 79.** ORS 701.105, as amended by section 2, chapter 766, Oregon Laws 2003, is  
 27 amended to read:

28 701.105. (1) A contractor who possesses a license as required under this chapter shall have in  
 29 effect public liability, personal injury and property damage insurance covering the work of the  
 30 contractor that is subject to this chapter, for an amount not less than:

- 31 (a) \$500,000 for a general contractor or licensed developer.
- 32 (b) \$300,000 for a residential-only specialty contractor.
- 33 (c) \$500,000 for all other specialty contractors.
- 34 (d) \$100,000 for a limited contractor.
- 35 (e) \$300,000 for an inspector.

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

39 **SECTION 80.** ORS 279C.515 is amended to read:

40 279C.515. (1) Every public improvement contract shall contain a clause or condition that, if the  
 41 contractor fails, neglects or refuses to make prompt payment of any claim for labor or services  
 42 furnished to the contractor or a subcontractor by any person in connection with the public im-  
 43 provement contract as the claim becomes due, the proper officer or officers representing the state  
 44 or a county, school district, municipality, municipal corporation or subdivision thereof, as the case  
 45 may be, may pay such claim to the person furnishing the labor or services and charge the amount

1 of the payment against funds due or to become due the contractor by reason of the contract.

2 (2) Every public improvement contract shall contain a clause or condition that, if the contractor  
3 or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor  
4 or materials in connection with the public improvement contract within 30 days after receipt of  
5 payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall  
6 owe the person the amount due plus interest charges commencing at the end of the 10-day period  
7 that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is sub-  
8 ject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the con-  
9 tractor or first-tier subcontractor on the amount due shall equal three times the discount rate on  
10 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that  
11 includes Oregon on the date that is 30 days after the date when payment was received from the  
12 contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The  
13 amount of interest may not be waived.

14 (3) Every public improvement contract and every contract related to the public improvement  
15 contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects  
16 or refuses to make payment to a person furnishing labor or materials in connection with the public  
17 improvement contract, the person may file a complaint with the [*Construction Contractors Board*]  
18 **Department of Consumer and Business Services**, unless payment is subject to a good faith dis-  
19 pute as defined in ORS 279C.580.

20 (4) The payment of a claim in the manner authorized in this section does not relieve the con-  
21 tractor or the contractor's surety from obligation with respect to any unpaid claims.

22 **SECTION 81.** ORS 279C.585 is amended to read:

23 279C.585. A contractor whose bid is accepted may substitute a first-tier subcontractor that was  
24 not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason  
25 for the substitution in writing to the contracting agency. A contractor may substitute a first-tier  
26 subcontractor under this section in the following circumstances:

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

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

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

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

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

38 (6) When the disclosed subcontractor does not hold a **construction contractor** license from the  
39 [*Construction Contractors Board*] **Department of Consumer and Business Services** and is required  
40 to be licensed by the [*board*] **department**.

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

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



1 (9) When the substitution is for good cause. The [*Construction Contractors Board*] **department**  
 2 shall define “good cause” by rule. “Good cause” includes but is not limited to the financial insta-  
 3 bility of a subcontractor. The definition of “good cause” must reflect the least-cost policy for public  
 4 improvements established in ORS 279C.305.

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

7 **SECTION 82.** ORS 279C.590 is amended to read:

8 279C.590. (1)(a) A subcontractor disclosed under ORS 279C.370 may file a complaint based on the  
 9 subcontractor disclosure requirements under ORS 279C.370 with the [*Construction Contractors*  
 10 *Board*] **Department of Consumer and Business Services** about a contractor if the contractor has  
 11 substituted another subcontractor for the complaining subcontractor.

12 (b) If more than one subcontractor files a complaint with the [*board*] **department** under para-  
 13 graph (a) of this subsection relating to a single subcontractor disclosure, the [*board*] **department**  
 14 shall consolidate the complaints into one proceeding. If the [*board*] **department** imposes a civil  
 15 penalty under this section against a contractor, the amount collected by the [*board*] **department**  
 16 shall be divided evenly among all of the complaining subcontractors.

17 (c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a  
 18 deposit of \$500 with the [*board*] **department** upon filing the complaint.

19 (d) If the [*board*] **department** determines that a contractor’s substitution was not in compliance  
 20 with ORS 279C.585, the [*board*] **department** shall return the full amount of the deposit posted under  
 21 paragraph (c) of this subsection to the complaining subcontractor.

22 (e) If the [*board*] **department** determines that a contractor has not substituted a subcontractor  
 23 or that the contractor’s substitution was in compliance with ORS 279C.585, the [*board*] **department**  
 24 shall award the contractor \$250 of the deposit and shall retain the other \$250, which may be ex-  
 25 pended by the [*board*] **department**.

26 (2) Upon receipt of a complaint under subsection (1) of this section, the [*board*] **department**  
 27 shall investigate the complaint. If the [*board*] **department** determines that a contractor has sub-  
 28 stituted a subcontractor in a manner not in compliance with ORS 279C.585, the [*board*] **department**  
 29 may impose a civil penalty against the contractor under subsections (3) to (5) of this section. Civil  
 30 penalties under this section shall be imposed in the manner provided under ORS 183.745.

31 (3) If the [*board*] **department** imposes a civil penalty under subsection (2) of this section and  
 32 it is the first time the [*board*] **department** has imposed a civil penalty under subsection (2) of this  
 33 section against the contractor during a three-year period, the [*board*] **department** shall:

34 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract  
 35 bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less.  
 36 Amounts collected by the [*board*] **department** under this paragraph shall be awarded to the com-  
 37 plaining subcontractor or subcontractors; and

38 (b) Impose a civil penalty on the contractor of up to \$1,000. Amounts collected by the [*board*]  
 39 **department** under this paragraph shall be retained by the [*board*] **department** and may be ex-  
 40 pended by the [*board*] **department**.

41 (4) If the [*board*] **department** imposes a civil penalty under subsection (2) of this section and  
 42 it is the second time the [*board*] **department** has imposed a civil penalty under subsection (2) of this  
 43 section against the contractor during a three-year period, the [*board*] **department** may:

44 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract  
 45 bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less.

1 Amounts collected by the [board] **department** under this paragraph shall be awarded to the com-  
 2 plaining subcontractor or subcontractors; and

3 (b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on  
 4 the list established under ORS 701.227 for up to six months. Amounts collected by the [board] **de-**  
 5 **partment** under this paragraph shall be retained by the [board] **department** and may be expended  
 6 by the [board] **department**.

7 (5) If the [board] **department** imposes a civil penalty under subsection (2) of this section and  
 8 the [board] **department** has imposed a civil penalty under subsection (2) of this section against the  
 9 contractor three or more times during a three-year period, the [board] **department** may:

10 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract  
 11 bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less.  
 12 Amounts collected by the [board] **department** under this paragraph shall be awarded to the com-  
 13 plaining subcontractor or subcontractors; and

14 (b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on  
 15 the list established under ORS 701.227 for up to one year. Amounts collected by the [board] **de-**  
 16 **partment** under this paragraph shall be retained by the [board] **department** and may be expended  
 17 by the [board] **department**.

18 (6) Within 10 working days after receiving a complaint under subsection (1) of this section, the  
 19 [board] **department** shall notify, in writing, any contracting agency that is a party to the contract  
 20 for which the complaint has been filed that the complaint has been filed.

21 **SECTION 83.** ORS 279C.600 is amended to read:

22 279C.600. (1) A person claiming to have supplied labor or materials for the performance of the  
 23 work provided for in a public contract, including any person having a direct contractual relationship  
 24 with the contractor furnishing the payment bond or a direct contractual relationship with any sub-  
 25 contractor, or an assignee of such person, or a person claiming moneys due the State Accident In-  
 26 surance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of  
 27 Revenue in connection with the performance of the contract, has a right of action on the contrac-  
 28 tor's payment bond as provided for in ORS 279C.380 and 279C.400 only if:

29 (a) The person or the assignee of the person has not been paid in full; and

30 (b) The person gives written notice of claim, as prescribed in ORS 279C.605, to the contractor  
 31 and the contracting agency.

32 (2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has re-  
 33 ceived information indicating that one or more workers providing labor on a public works have not  
 34 been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of  
 35 action first on the contractor's public works bond required under ORS 279C.836 and then, for any  
 36 amount of a claim not satisfied by the public works bond, on the contractor's payment bond, as  
 37 provided in ORS 279C.380 and 279C.400. When an investigation indicates that a subcontractor's  
 38 workers have not been paid in full at the prevailing rate of wage or overtime wages, the commis-  
 39 sioner has a right of action first on the subcontractor's public works bond and then, for any amount  
 40 of a claim not satisfied by the subcontractor's public works bond, on the contractor's payment bond.  
 41 The commissioner's right of action exists without necessity of an assignment and extends to workers  
 42 on the project who are not identified when the written notice of claim is given, but for whom the  
 43 commissioner has received information indicating that the workers have provided labor on the pub-  
 44 lic works and have not been paid in full. The commissioner shall give written notice of the claim,  
 45 as prescribed in ORS 279C.605, to the contracting agency, the [*Construction Contractors Board*]

1 **Department of Consumer and Business Services**, the contractor and, if applicable, the subcon-  
 2 tractor. The commissioner may not make a claim for the same unpaid wages against more than one  
 3 bond under this section.

4 **SECTION 84.** ORS 279C.830 is amended to read:

5 279C.830. (1)(a) The specifications for every contract for public works shall contain a provision  
 6 stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of  
 7 wage required under the Davis-Bacon Act (40 U.S.C. 276a) that may be paid to workers in each trade  
 8 or occupation required for the public works employed in the performance of the contract either by  
 9 the contractor or subcontractor or other person doing or contracting to do the whole or any part  
 10 of the work contemplated by the contract.

11 (b) If a public agency is required under paragraph (a) of this subsection to include the state and  
 12 federal prevailing rates of wage in the specifications, the public agency also shall include in the  
 13 specifications information showing which prevailing rate of wage is higher for workers in each trade  
 14 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-  
 15 dustries under ORS 279C.815 (2)(b).

16 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not  
 17 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838.

18 (2) The specifications for every contract for public works between a public agency and a con-  
 19 tractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the  
 20 Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a pro-  
 21 vision that the fee shall be paid to the commissioner under the administrative rule of the commis-  
 22 sioner.

23 (3) The specifications for every contract for public works shall contain a provision stating that  
 24 the contractor and every subcontractor must have a public works bond filed with the [*Construction*  
 25 *Contractors Board*] **Department of Consumer and Business Services** before starting work on the  
 26 project, unless exempt under ORS 279C.836 (7) or (8). Every contract awarded by a contracting  
 27 agency shall contain a provision requiring the contractor:

28 (a) To have a public works bond filed with the [*Construction Contractors Board*] **department**  
 29 before starting work on the project, unless exempt under ORS 279C.836 (7) or (8).

30 (b) To include in every subcontract a provision requiring the subcontractor to have a public  
 31 works bond filed with the [*Construction Contractors Board*] **department** before starting work on the  
 32 project, unless exempt under ORS 279C.836 (7) or (8).

33 **SECTION 85.** ORS 279C.836 is amended to read:

34 279C.836. (1) Except as provided in subsection (7) or (8) of this section, before starting work on  
 35 a contract or subcontract for a public works project, a contractor or subcontractor shall file with  
 36 the [*Construction Contractors Board*] **Department of Consumer and Business Services** a public  
 37 works bond with a corporate surety authorized to do business in this state in the amount of \$30,000.  
 38 The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau  
 39 of Labor and Industries to workers performing labor upon public works projects. The bond must  
 40 be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable  
 41 from the bond may not exceed the penal sum of the bond. The bond must remain in effect contin-  
 42 uously until depleted by claims paid under this section, unless the surety sooner cancels the bond.  
 43 The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontrac-  
 44 tor, to the [*board*] **department** and to the Bureau of Labor and Industries. When the bond is can-  
 45 celed, the surety is relieved of further liability for work performed on contracts entered into after

1 the cancellation. The cancellation does not limit the surety's liability for work performed on con-  
2 tracts entered into before the cancellation.

3 (2) Before permitting a subcontractor to start work on a public works project, the contractor  
4 shall verify that the subcontractor has filed a public works bond as required under this section or  
5 has elected not to file a public works bond under subsection (7) of this section.

6 (3) A contractor or subcontractor is not required under this section to file a separate public  
7 works bond for each public works project for which the contractor or subcontractor has a contract.

8 (4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of  
9 wage on a public works project is not required to file a public works bond under this section.

10 (5) A public works bond required by this section is in addition to any other bond the contractor  
11 or subcontractor is required to obtain.

12 (6) The [board] **department** may, by rule, require a contractor or subcontractor to obtain a new  
13 public works bond if a surety pays a claim out of an existing public works bond. The new bond must  
14 be in the amount of \$30,000. The [board] **department** may allow a contractor or subcontractor to  
15 obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum  
16 of the existing bond, notwithstanding payment by the surety on the claim.

17 (7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under  
18 ORS 200.055 may, for up to one year after certification, elect not to file a public works bond as re-  
19 quired under subsection (1) this section. If a business enterprise elects not to file a public works  
20 bond, the business enterprise shall give the [board] **department** written verification of the certif-  
21 ication and written notice that the business enterprise elects not to file the bond.

22 (b) A business enterprise that elects not to file a public works bond under this subsection shall  
23 notify the public agency for whose benefit the contract was awarded or, if the business enterprise  
24 is a subcontractor, the contractor of the election before starting work on a public works project.  
25 When a business enterprise elects not to file a public works bond under this subsection, a claim for  
26 unpaid wages may be made against the payment bond of the business enterprise or, if the business  
27 enterprise is a subcontractor, the payment bond of the contractor.

28 (c) An election not to file a public works bond expires one year after the date the business en-  
29 terprise is certified. After an election has expired and before starting or continuing work on a  
30 contract or subcontract for a public works project, the business enterprise shall file a public works  
31 bond with the [board] **department** as required under subsection (1) of this section.

32 (8) In cases of emergency, or when the interest or property of the public agency for whose  
33 benefit the contract was awarded probably would suffer material injury by delay or other cause, the  
34 requirement for filing a public works bond may be excused, if a declaration of the emergency is  
35 made in accordance with rules adopted under ORS 279A.065.

36 (9) The [board] **department** shall make available on a searchable public website information  
37 concerning public works bonds filed with the [board] **department**, claims made on those bonds,  
38 elections made by certified business enterprises not to file those bonds and the expiration date of  
39 each election. The [board] **department** may adopt rules necessary to perform the duties required  
40 of the [board] **department** by this section.

41 (10) The Commissioner of the Bureau of Labor and Industries, with approval of the [board] **de-**  
42 **partment**, shall adopt rules that establish language for public works bonds.

43 **SECTION 86.** ORS 448.279 is amended to read:

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

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

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

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

- 6 (a) Become licensed as a construction contractor with the [*Construction Contractors Board*]  
7 **Department of Consumer and Business Services** as provided under ORS chapter 701; or
- 8 (b) Become licensed as a landscape contractor as provided under ORS 671.510 to 671.710.

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

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

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

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

25 **SECTION 87.** ORS 454.715 is amended to read:

26 454.715. Subject to ORS chapter 183, the Department of Environmental Quality at any time may  
27 suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

- 28 (1) A material misrepresentation or false statement in the application for the license.
- 29 (2) Failure to comply with the applicable provisions of this chapter.
- 30 (3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal  
31 services.

32 (4) The licensee was licensed by the [*Construction Contractors Board*] **Department of Con-**  
33 **sumer and Business Services** at the time of licensing under ORS 454.695 and the license issued  
34 by the [*board*] **department** was revoked or suspended as provided under ORS 701.100 or 701.102 and  
35 rules adopted by the [*board*] **department**.

36 **SECTION 88.** ORS 455.125 is amended to read:

37 455.125. In addition to any other sanction, remedy or penalty provided by law, the Director of  
38 the Department of Consumer and Business Services or an appropriate advisory board may deny,  
39 suspend, condition or revoke a registration, certification, license or other authority to perform work  
40 or conduct business issued under laws administered by the department or advisory board if the  
41 holder:

- 42 (1) Fails to comply with a provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to  
43 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or ORS chapter 447, 455, 460 or 693, or with  
44 any rule adopted under those statutes or under ORS 455.117; or
- 45 (2) Engages in an act for which the [*Construction Contractors Board*] **department** imposes a

1 sanction on the holder under ORS 701.135.

2 **SECTION 89.** ORS 455.800 is amended to read:

3 455.800. As used in ORS 455.800 to 455.820:

4 (1) "Building official" means a person who is a building official as defined in ORS 455.715 or a  
5 Department of Consumer and Business Services employee charged with enforcement or adminis-  
6 tration of the state building code.

7 (2) "Building trade committee" means a group composed of experienced and knowledgeable local  
8 general contractors or other persons having substantial expertise in various aspects of one and two  
9 family dwelling construction under the Low-Rise Residential Dwelling Code.

10 (3) "General contractor" has the meaning given that term in ORS 701.005.

11 (4) "Master builder" means a person certified under ORS 455.810.

12 (5) "Qualified construction company" means a company that has been:

13 (a) Continuously licensed by the [*Construction Contractors Board*] **department** during the pre-  
14 ceding 60 months as a general contractor; or

15 (b) Continuously licensed by the [*Construction Contractors Board*] **department** during at least  
16 the preceding 24 months as a general contractor and by one or more other states during the balance  
17 of the preceding 60 months in an occupation equivalent to that of a general contractor.

18 (6) "Regular employee" means a person who:

19 (a) Is continuously employed by, and on the regular payroll of, a qualified construction company;

20 (b) Has filed a withholding exemption certificate pursuant to ORS 316.182 for work performed  
21 for the qualified construction company; and

22 (c) Is available during working hours to supervise on-site dwelling construction, including but  
23 not limited to supervising the installation of:

24 (A) Drywall;

25 (B) Electrical systems;

26 (C) Footings;

27 (D) Foundations;

28 (E) Framing;

29 (F) Insulation;

30 (G) Mechanical systems;

31 (H) Plumbing systems; and

32 (I) Stairs.

33 (7) "Whole dwelling remodel" means a project that includes the installation in an existing  
34 dwelling of all of the following:

35 (a) Drywall;

36 (b) Electrical systems;

37 (c) Footings;

38 (d) Foundations;

39 (e) Framing;

40 (f) Insulation;

41 (g) Mechanical systems; and

42 (h) Plumbing systems.

43 **SECTION 90.** ORS 455.805 is amended to read:

44 455.805. An individual may apply to the Department of Consumer and Business Services to be  
45 tested and certified as a master builder. The department shall establish uniform criteria for use in

1 determining whether to grant an application. The criteria must, at a minimum, provide that:

2 (1) The individual must be an owner or regular employee of a qualified construction company  
3 and be authorized by the company to provide assurance to the department that all state and local  
4 code requirements are met.

5 (2) In each of the five preceding calendar years, the individual must either have performed or  
6 supervised a dwelling construction or whole dwelling remodel. In at least two of the years, the  
7 construction or remodel must have occurred in a geographic area that had a master builder pro-  
8 gram.

9 (3) The individual must have completed a program sponsored by a local building trade committee  
10 or other program approved by the department, providing training relating to the construction of one  
11 and two family dwellings under the Low-Rise Residential Dwelling Code. A program must include  
12 but need not be limited to instruction in:

- 13 (a) Administration;
- 14 (b) Chimneys and fireplaces;
- 15 (c) Decay and termite protections;
- 16 (d) Energy conservation;
- 17 (e) Footings and foundations;
- 18 (f) Roof-ceiling construction;
- 19 (g) Roof coverings;
- 20 (h) Site inspections;
- 21 (i) Wall construction, assemblies and coverings; and
- 22 (j) Wood and metal framing.

23 (4) The individual must have scored at least 75 percent on a written examination, approved and  
24 administered by the department, covering the appropriate aspects of the Low-Rise Residential  
25 Dwelling Code.

26 (5)(a) The individual must not be the subject of an adverse final order issued by the [*Con-*  
27 *struction Contractors Board or*] Department of Consumer and Business Services based upon acts  
28 committed within 36 months preceding the application date that:

- 29 (A) Violated a specialty code, licensing or permit requirement; or
- 30 (B) Resulted in a claim being filed with the [*board or*] department against the individual.

31 (b) For purposes of this subsection, if the individual is an owner of a qualified construction  
32 company, an adverse final order issued against the company is an adverse final order issued against  
33 that individual.

34 **SECTION 91.** ORS 479.940 is amended to read:

35 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following  
36 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise  
37 Residential Dwelling Code:

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

1 (2) The provisions of subsection (1) of this section apply only to persons or businesses licensed  
2 and in good standing with the [*Construction Contractors Board*] **Department of Consumer and**  
3 **Business Services.**

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

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

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

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

22 **SECTION 92.** ORS 479.945 is amended to read:

23 479.945. (1) A restricted energy contractor's license is created for persons engaged in HVAC and  
24 such other categories as established by the Electrical and Elevator Board by rule under ORS  
25 455.117.

26 (2) A person licensed as a restricted energy contractor under this section and the person's em-  
27 ployees may install, alter, maintain, replace or repair electrical wiring and electrical products that  
28 are within the scope of the contractor's license issued under this section. A person covered by this  
29 subsection does not have to obtain a license under ORS 479.910.

30 (3) The license issued under this section shall limit the scope of activities that the licensee and  
31 licensee's employees may engage in and in no instance may the scope of the license exceed that of  
32 a Class B limited energy technician.

33 (4) An applicant for licensing under this section shall provide proof satisfactory to the board  
34 that the person has experience of the type of work covered by the license indorsement and shall pay  
35 the fees required by ORS 479.840 (1)(b) for a limited energy contractor.

36 (5) A restricted energy contractor licensee under this section shall:

37 (a) Maintain with the board a current list of all individuals employed by the licensee to engage  
38 in work permitted by this section;

39 (b) Issue an identification card to each employee working under the provisions of this section  
40 and identify the contractor, date of issue, contractor's identification number with the board and the  
41 [*Construction Contractors Board*] **Department of Consumer and Business Services**; and

42 (c) Maintain with the board a current form of identification card used by the contractor.

43 (6) A person holding a limited maintenance specialty contractor's license under ORS 479.630 (12)  
44 who also registers under this section shall comply with the identification card requirements of sub-  
45 section (5) of this section, but need not file a separate list of employees unless the work under the



1 contractor's license is done by different employees.

2 **SECTION 93.** ORS 657.665 is amended to read:

3 657.665. (1) Information secured from employing units, employees or other individuals pursuant  
4 to this chapter:

5 (a) Shall be confidential and for the exclusive use and information of the Director of the Em-  
6 ployment Department in the discharge of duties and shall not be open to the public (other than to  
7 public employees in the performance of their public duties under state or federal laws for the pay-  
8 ment of unemployment insurance benefits and to public employees in the performance of their public  
9 duties under the recognized compensation and retirement, relief or welfare laws of this state), except  
10 to the extent necessary for the presentation of a claim and except as required by the regulations  
11 of the United States Secretary of Health and Human Services pursuant to section 3304(a) of the  
12 Federal Unemployment Tax Act, as amended, and except as required by section 303 of the Social  
13 Security Act, as amended.

14 (b) Shall not be used in any court in any action or proceeding pending therein unless the di-  
15 rector or the state is a party to such action or proceedings or the proceedings concern the estab-  
16 lishment, enforcement or modification of a support obligation and support services are being  
17 provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

18 (2) However, any claimant or legal representative, at a hearing before an administrative law  
19 judge, shall be supplied with information from such records to the extent necessary for the proper  
20 presentation of a claim.

21 (3) Notwithstanding subsection (1) of this section, information secured from employing units  
22 pursuant to this chapter may be released:

23 (a) To agencies of this state, federal agencies and local government agencies to the extent nec-  
24 essary to properly carry out governmental planning, performance measurement, program analysis,  
25 socioeconomic analysis and policy analysis functions performed under applicable law. Information  
26 provided such agencies shall be confidential and shall not be released by such agencies in any  
27 manner that would be identifiable as to individuals, claimants, employees or employing units. Costs  
28 of furnishing information pursuant to this subsection not prepared for the use of the Employment  
29 Department shall be borne by the parties requesting the information; and

30 (b) In accordance with ORS 657.673.

31 (4) Nothing in this section shall prevent the Employment Department from providing names and  
32 addresses of employing units to the Bureau of Labor and Industries for the purpose of disseminating  
33 information to employing units. The names and addresses provided shall be confidential and shall  
34 not be used for any other purposes. Costs of furnishing information pursuant to this subsection not  
35 prepared for the use of the Employment Department shall be borne by the bureau.

36 (5) Nothing in this section shall prevent the Employment Department from providing to the  
37 Commissioner of the Bureau of Labor and Industries, for the purpose of performing duties under  
38 ORS 279C.800 to 279C.870, the names, addresses and industrial codes of employer units, the number  
39 of employees each unit employs during a given time period and the firm number assigned to em-  
40 ployer units by the Employment Department. Information so provided shall be confidential and shall  
41 not be released by the commissioner in any manner that would identify such employing units except  
42 to the extent necessary to carry out the purposes of this subsection and as provided in subsection  
43 (1)(b) of this section. Costs of furnishing information pursuant to this subsection not prepared for the  
44 use of the Employment Department shall be borne by the bureau.

45 (6) Nothing in this section shall prevent the Employment Department from providing information

1 required under ORS 657.660 (3) and (4) to the Public Employees Retirement System for the purpose  
2 of determining the eligibility of members of the retirement system for disability retirement allow-  
3 ances under ORS chapter 238. The information provided shall be confidential and shall not be used  
4 for any other purposes. Costs of furnishing information pursuant to this subsection shall be borne  
5 by the Public Employees Retirement System.

6 (7) Nothing in this section shall prevent the Employment Department from providing to the  
7 Oregon Economic and Community Development Commission information required by the commission  
8 in performing its duty under ORS 285A.050 to verify changes in employment levels following direct  
9 employer participation in Economic and Community Development Department programs or indirect  
10 participation through municipalities under ORS 285B.410 to 285B.482 and regional boards and part-  
11 nerships under ORS 285B.230 to 285B.269. Information provided to the commission may include an  
12 employer's employment level, total subject wages payroll and whole hours worked. The information  
13 may not be used for any other purpose and must be held confidential. The commission may not re-  
14 lease the information in any manner that would identify the employing unit or any employee except  
15 to the extent necessary to carry out its duties under ORS 285A.050. Costs of furnishing information  
16 under this subsection that is not prepared for the use of the Employment Department shall be borne  
17 by the commission.

18 (8) Any officer or employee of the Director of the Employment Department, who, except with  
19 authority of the director or pursuant to regulations, or as otherwise required by law, shall disclose  
20 confidential information under this section, thereafter may be disqualified from holding any ap-  
21 pointment or employment by the director.

22 (9) Nothing in this section shall prevent the Employment Department from providing information  
23 to the Department of Revenue for the purpose of performing its duties under ORS 293.250, or the  
24 revenue and tax laws of this state. Information provided may include names and addresses of em-  
25 ployers and employees and payroll data of employers and employees. Information so provided shall  
26 be confidential and shall not be released by the Director of the Department of Revenue in any  
27 manner that would identify such employing unit or employee except to the extent necessary to carry  
28 out its duties under ORS 293.250 or in auditing or reviewing any report or return required or per-  
29 mitted to be filed under the revenue and tax laws administered by the department. However, the  
30 Director of the Department of Revenue shall not disclose any information received to any private  
31 collection agency or for any other purpose. Costs of furnishing information pursuant to this sub-  
32 section not prepared for the use of the Employment Department shall be borne by the Department  
33 of Revenue.

34 (10) Nothing in this section shall prevent the Employment Department from providing informa-  
35 tion to the Department of Consumer and Business Services for the purpose of performing its duties  
36 under ORS chapters 654 and 656. Information provided may include but is not limited to the name,  
37 address, number of employees and industrial classification code of an employer and payroll data of  
38 employers and employees. Information provided shall be confidential and may not be released by the  
39 Department of Consumer and Business Services in any manner that would identify an employing unit  
40 or employee except to the extent necessary to carry out the department's duties under ORS chapters  
41 654 and 656, including administrative hearings and court proceedings in which the Department of  
42 Consumer and Business Services is a party. Costs of furnishing information pursuant to this sub-  
43 section that is not prepared for the use of the Employment Department shall be borne by the De-  
44 partment of Consumer and Business Services.

45 (11) Nothing in this section shall prevent the Employment Department from providing informa-

1 tion to the [*Construction Contractors Board*] **Department of Consumer and Business Services** for  
 2 the purpose of performing its duties under ORS chapter 701. Information provided to the [*board*]  
 3 **department** may include names and addresses of employers and status of their compliance with this  
 4 chapter.

5 (12) Nothing in this section shall prevent the Employment Department from providing informa-  
 6 tion to the State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and  
 7 powers under ORS 453.307 to 453.414. Information so provided shall be the employer or agent name,  
 8 address, telephone number and standard industrial classification. Information so provided shall be  
 9 confidential and shall not be released by the State Fire Marshal in any manner that would identify  
 10 such employing units except to the extent necessary to carry out duties under ORS 453.307 to  
 11 453.414. Costs of furnishing information pursuant to this subsection not prepared for the use of the  
 12 Employment Department shall be borne by the office of the State Fire Marshal.

13 (13) Nothing in this section shall prevent the Employment Department from providing informa-  
 14 tion to the Oregon Student Assistance Commission for the purposes of performing the commission's  
 15 duties under ORS chapter 348 and Title IV of the Higher Education Act of 1965, as amended. In-  
 16 formation provided may include names and addresses of employers and employees and payroll data  
 17 of employers and employees. Information so provided shall be confidential and shall not be released  
 18 by the Oregon Student Assistance Commission in any manner that would identify such employing  
 19 unit or employee except to the extent necessary to carry out duties under ORS chapter 348 or Title  
 20 IV of the Higher Education Act of 1965, as amended. Costs of furnishing information pursuant to this  
 21 subsection not prepared for the use of the Employment Department shall be borne by the Oregon  
 22 Student Assistance Commission.

23 (14) Any person or officer or employee of an entity to whom information is disclosed or given  
 24 by the Employment Department pursuant to this section, who divulges or uses such information for  
 25 any purpose other than that specified in the provision of law or agreement authorizing the use or  
 26 disclosure, may be disqualified from holding any appointment or employment, or performing any  
 27 service under contract, with the state agency employing that person or officer.

28 (15) Notwithstanding subsection (1) of this section, the industrial classification code assigned to  
 29 an employing unit may be released to state agencies, federal agencies and local government agencies  
 30 to the extent necessary to carry out governmental functions performed under applicable law. Except  
 31 as provided in ORS 190.270, information provided to such agencies is confidential and may not be  
 32 released by the agencies in any manner that would allow identification of an employing unit. Costs  
 33 of furnishing information that is not prepared for the use of the Employment Department shall be  
 34 paid by the party requesting the information under this subsection.

35 **SECTION 94.** ORS 670.304 is amended to read:

36 670.304. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following  
 37 professional licensing and advisory boards:

- 38 (1) Professional licensing and advisory boards established in the Office of the Secretary of State.
- 39 (2) The Oregon Board of Maritime Pilots, in the Department of Transportation.
- 40 (3) The Board of Cosmetology, in the Oregon Health Licensing Agency.
- 41 (4) The State Board of Architect Examiners.
- 42 (5) The State Landscape Contractors Board.
- 43 (6) The State Board of Examiners for Engineering and Land Surveying.
- 44 (7) State Landscape Architect Board.
- 45 (8) State Board of Geologist Examiners.

1 (9) State Board of Tax Practitioners.

2 (10) Oregon Board of Accountancy.

3 [(11) *The Construction Contractors Board.*]

4 **SECTION 95.** ORS 670.306 is amended to read:

5 670.306. (1) Subsections (2) and (3) of this section shall apply only to the following professional  
6 licensing boards:

7 (a) State Board of Architect Examiners.

8 [(b) *Construction Contractors Board.*]

9 [(c)] (b) State Board of Examiners for Engineering and Land Surveying.

10 [(d)] (c) State Landscape Architect Board.

11 [(e)] (d) State Landscape Contractors Board.

12 [(f)] (e) Oregon Board of Accountancy.

13 [(g)] (f) Oregon Board of Maritime Pilots.

14 [(h)] (g) State Board of Tax Practitioners.

15 (2) A board shall fix the qualifications of and appoint an administrative officer. The determi-  
16 nation of qualifications and appointment of an administrative officer shall be made after consulta-  
17 tion:

18 (a) In the case of a board referred to in subsection (1)(a), (b), (c), (d), (e)[, (f) or (h)] **or (g)** of this  
19 section, with the Governor.

20 (b) In the case of the Oregon Board of Maritime Pilots, with the Director of Transportation.

21 (3) An administrative officer of a board shall not be a member of that board.

22 (4) Subject to the applicable rules of the State Personnel Relations Law, the board shall fix the  
23 compensation of its administrator, who shall be in the unclassified service.

24 (5) Subject to applicable rules of the State Personnel Relations Law, the administrative officer  
25 shall appoint all subordinate employees, prescribe their duties and fix their compensation.

26 **SECTION 96.** ORS 671.540 is amended to read:

27 671.540. ORS 671.510 to 671.710 and 671.990 (2) do not apply to:

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

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

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

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

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

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

39 (4) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by  
40 a person or business licensed with the [*Construction Contractors Board*] **Department of Consumer**  
41 **and Business Services related to construction contractors.**

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

45 (6) Any owner of property who contracts for landscaping work to be performed by a person li-

1 censed under ORS 671.560. The exception provided by this subsection does not apply to a person  
2 who, in pursuit of an independent business, performs or contracts for the performance of landscaping  
3 work with the intent of offering for sale before, upon or after completion of the landscaping work  
4 the property upon which the landscaping work is performed.

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

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

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

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

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

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

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

32 (14) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS chapter  
33 701 when performing work that the contractor may perform under subsection (8) or (9) of this sec-  
34 tion.

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

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

40 **SECTION 97. The amendments to ORS 701.205 by section 44 of this 2007 Act do not ter-**  
41 **minate the term of office of any board member serving on the effective date of the amend-**  
42 **ments to ORS 701.205 by section 44 of this 2007 Act or alter the eligibility of a board member**  
43 **for reappointment.**