

House Bill 2519

Sponsored by Representative JENSON (at the request of Oregon Remodelers Association)

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**.

Allows residential general contractor, residential specialty contractor or residential limited contractor to undertake, offer to undertake or submit bid to perform work on large commercial structure if price of work does not exceed \$250,000.

Becomes operative July 1, 2010.

A BILL FOR AN ACT

1
2 Relating to construction contractors; creating new provisions; and amending ORS 279C.375, 701.005
3 and 701.021.

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

5 **SECTION 1.** ORS 701.005 is amended to read:

6 701.005. As used in this chapter:

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

8 (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

9 (a) Commercial general contractor level 1;

10 (b) Commercial specialty contractor level 1;

11 (c) Commercial general contractor level 2;

12 (d) Commercial specialty contractor level 2; or

13 (e) Commercial developer.

14 (3) "Commercial developer" means a developer of property that is zoned for or intended for use
15 compatible with a small commercial or large commercial structure.

16 (4) "Construction debt" means an amount owed under:

17 (a) An order or arbitration award issued by the board that has become final by operation of law;

18 (b) A judgment or civil penalty that has become final by operation of law arising from con-
19 struction activities within the United States; or

20 (c) A judgment or civil penalty that has become final by operation of law arising from a failure
21 to comply with ORS 656.017.

22 (5) "Contractor" means any of the following:

23 (a) A person who, for compensation or with the intent to sell, arranges or undertakes or offers
24 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,
25 move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other
26 structure, project, development or improvement attached to real estate, or to clean or service
27 chimneys, or to do any part thereof.

28 (b) A person that purchases or owns property and constructs or for compensation arranges for
29 the construction of one or more residential structures or small commercial structures with the in-
30 tent of selling the structures.

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

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

7 (e) Any person except a landscape contracting business, nurseryman, gardener or person en-
 8 gaged in the commercial harvest of forest products, that is engaged as an independent contractor
 9 to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

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

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

16 (7) “General contractor”:

17 (a) Means a contractor whose business operations require the use of more than two unrelated
 18 building trades or crafts that the contractor supervises or performs in whole or part, whenever the
 19 sum of all contracts on any single property, including materials and labor, exceeds an amount es-
 20 tablished by rule by the board.

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

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

26 (9) “Key employee” means an employee or owner of a contractor who is a corporate officer,
 27 manager, superintendent, foreperson or lead person or any other employee identified by the board
 28 by rule.

29 (10) “Large commercial structure” means a structure that is not a residential structure or small
 30 commercial structure.

31 (11) “Officer” means any of the following persons:

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

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

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

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

36 (e) A trustee.

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

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

41 (a) Residential general contractor;

42 (b) Residential specialty contractor;

43 (c) Residential limited contractor; or

44 (d) Residential developer.

45 (13) “Residential developer” means a developer of property that is zoned for or intended for use

1 compatible with a residential or small commercial structure.

2 (14) "Residential structure":

3 (a) Means:

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

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

6 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a
7 larger structure, if the property interest in the unit is separate from the property interest in the
8 larger structure;

9 (D) A modular home constructed off-site;

10 (E) A manufactured dwelling; or

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

12 (b) Does not mean:

13 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
14 nonresidential units;

15 (B) Transient lodging;

16 (C) A residential school or residence hall;

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

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

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

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

23 (H) A nursing home;

24 (I) A hospital; or

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

26 (15) "Responsible managing individual" means an individual who:

27 (a) Is an owner described in ORS 701.094 or an employee of the business;

28 (b) Exercises management or supervisory authority, as defined by the board by rule, over the
29 construction activities of the business; and

30 (c)(A) Has successfully completed the training and testing required for licensing under ORS
31 701.122 within a period identified by the board by rule;

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

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

34 (16) "Small commercial structure" means:

35 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
36 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
37 the highest interior overhead finish of the structure; **or**

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

42 *[(c) A nonresidential structure of any size for which the contract price of all construction contractor*
43 *work to be performed on the structure as part of a construction project does not total more than*
44 *\$250,000.]*

45 (17) "Specialty contractor" means a contractor who performs work on a structure, project, de-

1 velopment or improvement and whose operations as such do not fall within the definition of “general
2 contractor.” “Specialty contractor” includes a person who performs work regulated under ORS
3 446.395.

4 (18) “Zero-lot-line dwelling” means a single-family dwelling unit constructed in a group of at-
5 tached units in which:

6 (a) Each attached unit extends from foundation to roof with open space on two sides; and

7 (b) Each dwelling unit is separated by a property line.

8 **SECTION 2.** ORS 701.021 is amended to read:

9 701.021. (1) Except as provided in ORS 701.010, a person or joint venture that undertakes, offers
10 to undertake or submits a bid to do work as a contractor must have a current license issued by the
11 Construction Contractors Board and possess an appropriate endorsement as provided in this section.

12 (2) A person or joint venture that undertakes, offers to undertake or submits a bid to do work
13 as a contractor in preparation for or in connection with a residential structure must have one of
14 the following endorsements:

15 (a) Residential general contractor.

16 (b) Residential specialty contractor.

17 (c) Residential limited contractor.

18 (d) Residential developer.

19 (3) A person or joint venture that undertakes, offers to undertake or submits a bid to do work
20 as a contractor in preparation for or in connection with a small commercial structure must have
21 one of the following endorsements:

22 (a) Residential general contractor.

23 (b) Residential specialty contractor.

24 (c) Residential limited contractor.

25 (d) Residential developer.

26 (e) Commercial general contractor level 1.

27 (f) Commercial specialty contractor level 1.

28 (g) Commercial general contractor level 2.

29 (h) Commercial specialty contractor level 2.

30 (i) Commercial developer.

31 (4) **Except as provided in subsection (5) of this section,** a person or joint venture that
32 undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or
33 in connection with a large commercial structure must have one of the following endorsements:

34 (a) Commercial general contractor level 1.

35 (b) Commercial specialty contractor level 1.

36 (c) Commercial general contractor level 2.

37 (d) Commercial specialty contractor level 2.

38 (e) Commercial developer.

39 **(5) A person or joint venture that has an endorsement as a residential general contrac-**
40 **tor, residential specialty contractor or residential limited contractor may undertake, offer**
41 **to undertake or submit a bid to do work in preparation for or in connection with a large**
42 **commercial structure if the total price of all construction contractor work on the structure**
43 **by the person or joint venture does not exceed \$250,000.**

44 **SECTION 3.** ORS 279C.375 is amended to read:

45 279C.375. (1) After bids are opened and a determination is made that a public improvement

1 contract is to be awarded, the contracting agency shall award the contract to the lowest responsible
2 bidder.

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

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

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

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

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

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

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

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

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

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

31 _____

32 _____

33 RESPONSIBILITY DETERMINATION FORM

34 _____

35 Project Name: _____

36 Bid Number: _____

37 Business Entity Name: _____

38 CCB License Number: _____

39 Form Submitted By (Contracting Agency): _____

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

41 Title: _____

42 Date: _____

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

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

1 [] Checked the list created by the
2 Construction Contractors Board
3 under ORS 701.227 for bidders who
4 are not qualified to hold a public
5 improvement contract.

6 [] Determined whether the bidder has
7 met the standards of responsibility.
8 In so doing, the contracting agency
9 has considered whether the bidder:

10 [] Has available the appropriate
11 financial, material, equipment,
12 facility and personnel resources
13 and expertise, or the ability to
14 obtain the resources and
15 expertise, necessary to meet
16 all contractual responsibilities.

17 [] Has a satisfactory record of
18 performance.

19 [] Has a satisfactory record of
20 integrity.

21 [] Is qualified legally to contract
22 with the contracting agency.

23 [] Has supplied all necessary
24 information in connection with
25 the inquiry concerning
26 responsibility.

27 [] Determined the bidder to be
28 (check one of the following):

29 [] Responsible under ORS 279C.375
30 (3)(a) and (b).

31 [] Not responsible under
32 ORS 279C.375 (3)(a) and (b).

33 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
34

35

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

39 (4) The successful bidder shall:

40 (a) Promptly execute a formal contract; and

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

43 (5) Based on competitive bids, a contracting agency may award a public improvement contract
44 or may award multiple public improvement contracts when specified in the invitation to bid.

45 (6) A contracting agency may not exclude a commercial contractor from competing for a public

1 contract on the basis that the license issued by the Construction Contractors Board is endorsed as
2 a level 1 or level 2 license. **A contracting agency may not exclude a residential contractor from**
3 **competing for a public contract on the basis that the contractor submitted the bid under**
4 **authority of ORS 701.021 (5).** As used in this section, “commercial contractor” [*has the meaning*
5 *given that term*] and “residential contractor” have the meanings given those terms in ORS
6 701.005.

7 **SECTION 4. The amendments to ORS 279C.375, 701.005 and 701.021 by sections 1 to 3 of**
8 **this 2009 Act become operative on July 1, 2010.**

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