

House Bill 2954

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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 the 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, 279B.130, 279C.365, 279C.375, 279C.400,
4 279C.440, 279C.515, 279C.585, 279C.590, 279C.600, 279C.830, 279C.836, 448.279, 454.715, 455.125,
5 455.129, 455.800, 455.805, 479.940, 479.945, 657.665, 670.304, 670.306, 671.540, 701.005, 701.010,
6 701.013, 701.021, 701.026, 701.031, 701.035, 701.046, 701.056, 701.060, 701.063, 701.068, 701.073,
7 701.088, 701.094, 701.098, 701.102, 701.109, 701.112, 701.114, 701.117, 701.120, 701.122, 701.124,
8 701.126, 701.128, 701.131, 701.133, 701.139, 701.140, 701.143, 701.145, 701.146, 701.148, 701.149,
9 701.150, 701.153, 701.157, 701.160, 701.180, 701.205, 701.215, 701.225, 701.227, 701.230, 701.235,
10 701.238, 701.240, 701.250, 701.255, 701.260, 701.295, 701.305, 701.315, 701.325, 701.330, 701.335,
11 701.345, 701.348, 701.350, 701.505, 701.515, 701.525, 701.530, 701.550, 701.565, 701.630 and 701.992.

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

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

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

17 **(a) Deliver to the Department of Consumer and Business Services all records and prop-**
18 **erty within the jurisdiction of the administrator that relate to the duties, functions and**
19 **powers transferred by section 1 of this 2009 Act; and**

20 **(b) Transfer to the Department of Consumer and Business Services those employees en-**
21 **gaged primarily in the exercise of the duties, functions and powers transferred by section 1**
22 **of this 2009 Act.**

23 **(2) The Director of the Department of Consumer and Business Services shall take pos-**
24 **session of the records and property, and shall take charge of the employees and employ them**
25 **in the exercise of the duties, functions and powers transferred by section 1 of this 2009 Act,**
26 **without reduction of compensation but subject to change or termination of employment or**
27 **compensation as provided by law.**

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

31 **SECTION 3. (1) The unexpended balances of amounts authorized to be expended by the**

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 Construction Contractors Board for the biennium beginning July 1, 2009, from revenues
2 dedicated, continuously appropriated, appropriated or otherwise made available for the pur-
3 pose of administering and enforcing the duties, functions and powers transferred by section
4 1 of this 2009 Act are transferred to and are available for expenditure by the Department of
5 Consumer and Business Services for the biennium beginning July 1, 2009, for the purpose of
6 administering and enforcing the duties, functions and powers transferred by section 1 of this
7 2009 Act.

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

11 **SECTION 4.** The transfer of duties, functions and powers to the Department of Consumer
12 and Business Services by section 1 of this 2009 Act does not affect any action, proceeding
13 or prosecution involving or with respect to such duties, functions and powers begun before
14 and pending at the time of the transfer, except that the Department of Consumer and Busi-
15 ness Services is substituted for the Construction Contractors Board in the action, proceeding
16 or prosecution.

17 **SECTION 5.** (1) Nothing in sections 1 to 7 of this 2009 Act relieves a person of a liability,
18 duty or obligation accruing under or with respect to the duties, functions and powers
19 transferred by section 1 of this 2009 Act. The Department of Consumer and Business Ser-
20 vices may undertake the collection or enforcement of any such liability, duty or obligation.

21 (2) The rights and obligations of the Construction Contractors Board legally incurred
22 under contracts, leases and business transactions executed, entered into or begun before the
23 operative date of section 1 of this 2009 Act accruing under or with respect to the duties,
24 functions and powers transferred by section 1 of this 2009 Act are transferred to the De-
25 partment of Consumer and Business Services. For the purpose of succession to these rights
26 and obligations, the Department of Consumer and Business Services is a continuation of the
27 Construction Contractors Board and not a new authority.

28 **SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1
29 of this 2009 Act, the rules of the Construction Contractors Board with respect to such duties,
30 functions or powers that are in effect on the operative date of section 1 of this 2009 Act
31 continue in effect until superseded or repealed by rules of the Department of Consumer and
32 Business Services. References in such rules of the Construction Contractors Board to the
33 Department of Consumer and Business Services or an officer or employee of the Con-
34 struction Contractors Board are considered to be references to the Department of Consumer
35 and Business Services or an officer or employee of the Department of Consumer and Busi-
36 ness Services.

37 **SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly
38 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
39 the context of the duties, functions and powers transferred by section 1 of this 2009 Act,
40 reference is made to the Construction Contractors Board, or an officer or employee of the
41 Construction Contractors Board, whose duties, functions or powers are transferred by sec-
42 tion 1 of this 2009 Act, the reference is considered to be a reference to the Department of
43 Consumer and Business Services who by this 2009 Act is charged with carrying out such
44 duties, functions and powers.

45 **SECTION 8.** ORS 87.007 is amended to read:

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

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

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

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

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

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

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

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

24 (b) Retain in escrow, as defined in ORS 696.505, an amount of funds that is not less than 25
25 percent of the sale price of the residential property. The funds shall be maintained in or released
26 from escrow pursuant to written instructions to the escrow agent from the owner that sold the
27 property and the purchaser. The written instructions shall provide that any claims of lien that are
28 perfected after the date of the sale of the property and that are not paid by the owner that sold the
29 property shall be paid upon demand by the purchaser from the amount maintained in escrow. The
30 escrow agent shall release the unused funds from escrow to the owner that sold the property if the
31 escrow agent receives a request from the owner that sold the property and the owner provides
32 documentation from a title company that:

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

35 (B) One or more claims of lien have been perfected against the property, that 135 days have
36 passed since the date that each such claim of lien was filed and that all such perfected claims of lien
37 have been released or waived.

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

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

45 (e) Complete the sale of the residential property after the deadline for perfecting all claims of

1 liens under ORS 87.035 with respect to the property.

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

8 (3) Not later than the date the sale of the residential property is completed, the owner who sold
9 the property shall complete, sign and deliver to the purchaser a form specifying the method that the
10 owner has selected to comply with the requirements of subsection (2) of this section or that sub-
11 section (2) of this section does not apply to the sale of the property. The notice shall be in a form
12 designated by the [*Construction Contractors Board*] **department** by rule under ORS 701.235.

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

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

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

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

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

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

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

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

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

35 (9) Nothing in this section requires the payment of a lien that is not otherwise valid. This sec-
36 tion does not apply to claims of lien perfected by persons furnishing any materials, equipment, ser-
37 vices or labor at the request of the purchaser of the residential property.

38 **SECTION 9.** ORS 87.023 is amended to read:

39 87.023. The notice of right to a lien required under ORS 87.021 shall include, but not be limited
40 to, the following information and shall be substantially in the following form:

41 _____

42
43 NOTICE OF RIGHT TO A LIEN.
44 WARNING: READ THIS NOTICE.
45 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 im-
provements 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 10. ORS 87.058 is amended to read:

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

[(a)] notwithstanding ORS 87.005, “contractor” has the meaning given that term in ORS 701.005.

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

(2) If a person files a suit to enforce a lien perfected under ORS 87.035 and the owner of the structure subject to that lien files a complaint 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

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

(c) The continued existence of the lien on which the suit is pending is attributable to the failure of the contractor who has been paid by the owner to pay the person suing for that person’s contribution toward completion of the structure.

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

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

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

(A) A description of the structure;

1 (B) The street address of the structure;

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

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

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

7 (5) After the [board] **department** order on the complaint becomes final and the [board] **de-**
8 **partment** issues any required notice for payment against the contractor’s bond or deposit, the cir-
9 cuit court shall dissolve the stay ordered under subsection (4) of this section.

10 **SECTION 11.** ORS 87.093 is amended to read:

11 87.093. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**
12 **Services** shall adopt by rule a form entitled “Information Notice to Owner” which shall describe,
13 in nontechnical language and in a clear and coherent manner using words in their common and
14 everyday meanings, the pertinent provisions of the Construction Lien Law of this state and the
15 rights and responsibilities of an owner of property and an original contractor under that law. The
16 “Information Notice to Owner” shall include signature lines for the contractor and the property
17 owner. The rights and responsibilities described in the form shall include, but not be limited to:

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

19 (b) The right to file a complaint against a licensed contractor with the [board] **department** and,
20 if appropriate, to be reimbursed from the contractor’s bond filed under ORS chapter 701; and

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

25 (2)(a) Each original contractor shall deliver a copy of the “Information Notice to Owner”
26 adopted by the [board] **department** under this section to:

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

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

31 (b) If the residential construction or improvement contract is an oral contract, the original
32 contractor shall mail or otherwise deliver the “Information Notice to Owner” not later than five
33 days after the contract is made.

34 (3) The contractor shall deliver the “Information Notice to Owner” personally, by registered or
35 certified mail or by first class mail with certificate of mailing.

36 (4) This section applies only to a residential construction or improvement contract for which the
37 aggregate contract price exceeds \$1,000. If the price of a residential improvement contract was ini-
38 tially less than \$1,000, but during the course of the performance of the contract exceeds that
39 amount, the original contractor shall mail or otherwise deliver the “Information Notice to Owner”
40 not later than five days after the contractor knows or should reasonably know that the contract
41 price will exceed \$1,000.

42 (5) Notwithstanding subsections (2) and (4) of this section, the original contractor need not send
43 the owner an “Information Notice to Owner” if the owner is a contractor licensed with the [board]
44 **department** under ORS chapter 701.

45 (6) Notwithstanding ORS 87.010 and 87.030, if an original contractor does not deliver an owner

1 or agent with an “Information Notice to Owner” as required under subsections (2) to (4) of this
 2 section, the original contractor may not claim any lien created under ORS 87.010 upon any im-
 3 provement, lot or parcel of land of the owner for labor, services or materials supplied under the
 4 residential construction or improvement contract for which the original contractor failed to deliver
 5 the required “Information Notice to Owner”.

6 (7) If an original contractor does not deliver an “Information Notice to Owner” to an owner or
 7 agent as required under subsection (2) of this section, the [board] **department** may suspend the li-
 8 cense of the original contractor for any period of time that the [board] **department** considers ap-
 9 propriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided
 10 in ORS 701.992.

11 (8) As used in this section:

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

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

20 **SECTION 12.** ORS 183.530 is amended to read:

21 183.530. A housing cost impact statement shall be prepared upon the proposal for adoption or
 22 repeal of any rule or any amendment to an existing rule by:

23 (1) The State Housing Council;

24 (2) [A *building codes division of*] The Department of Consumer and Business Services or any
 25 board associated with the department with regard to rules adopted under ORS 455.610 to 455.630
 26 **or ORS chapter 701;**

27 (3) The Land Conservation and Development Commission;

28 (4) The Environmental Quality Commission;

29 [(5) *The Construction Contractors Board;*]

30 [(6)] (5) The Occupational Safety and Health Division of the Department of Consumer and
 31 Business Services; or

32 [(7)] (6) The State Department of Energy.

33 **SECTION 13.** ORS 205.125 is amended to read:

34 205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the fol-
 35 lowing information for each order or warrant recorded:

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

37 (b) The name of the officer and the agency that issued the order or warrant or the name of the
 38 complainant or claimant in whose favor an order [*of the Construction Contractors Board*] **has been**
 39 **given by the Department of Consumer and Business Services under ORS chapter 701 or by**
 40 **the State Landscape Contractors Board** [*has been given*]. The name of the agency, **department** or
 41 board that issued the order or warrant must be clearly printed on the order or warrant.

42 (c) The amount of any monetary obligation imposed by the order or warrant, and the names of
 43 all persons against whom the obligation is imposed.

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

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

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

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

4 (2) From the date that an order or warrant is recorded in the County Clerk Lien Record, the
 5 order or warrant shall have the attributes and effect of a judgment that has been entered in the
 6 register of the circuit court for that county, including but not limited to the creation of a judgment
 7 lien for any monetary obligation in favor of the officer or agency issuing the order or warrant or
 8 in favor of the complainant or claimant in the proceedings before the [*Construction Contractors*
 9 *Board*] **Department of Consumer and Business Services under ORS chapter 701** or the State
 10 Landscape Contractors Board, renewal and enforcement by supplementary proceedings, writs of ex-
 11 ecution, notices of garnishment and writs of garnishment.

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

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

18 **SECTION 14.** ORS 205.126 is amended to read:

19 205.126. (1) At any time after recording an order or warrant in the County Clerk Lien Record,
 20 a complainant or claimant or an attorney for an agency, complainant or claimant may file in the
 21 circuit court for the county where the order or warrant is recorded, a copy of the original order
 22 or warrant certified by the agency to be a true copy of original, and an affidavit of the complainant,
 23 claimant or attorney verifying that the order or warrant was recorded in the County Clerk Lien
 24 Record for that county, the date that the order or warrant was recorded and the date on which any
 25 notice of renewal was recorded under subsection (2) of this section. Subject to any other require-
 26 ments that may apply to the enforcement remedy sought by the agency, complainant or claimant,
 27 proceedings may thereafter be commenced by the agency, complainant or claimant for the enforce-
 28 ment of the order or warrant, in the same manner as provided for the enforcement of judgments is-
 29 sued by a court. Enforcement proceedings may include:

- 30 (a) Writ of execution proceedings under ORS 18.252 to 18.993.
- 31 (b) Proceedings in support of execution under ORS 18.265, 18.268 and 18.270.
- 32 (c) Garnishment proceedings under ORS 18.600 to 18.850.

33 (2) At any time within 10 years after the recording of an order or warrant, an agency,
 34 complainant or claimant, acting with or without the assistance of an attorney, may renew an order
 35 or warrant by recording a notice of renewal in the County Clerk Lien Record. A notice of renewal
 36 recorded within the time specified by this subsection has the attributes and effect of an extension
 37 of judgment remedies noted in the register under ORS 18.182, from the date that the notice is re-
 38 corded. A notice of renewal recorded under this section must state:

39 (a) The name of the agency that issued the order or warrant or the name of the complainant
 40 or claimant in whose favor an order [*of the Construction Contractors Board*] **has been given by the**
 41 **Department of Consumer and Business Services under ORS chapter 701** or **by the** State
 42 Landscape Contractors Board [*has been given*];

43 (b) The names of all persons against whom a monetary obligation is imposed under the order
 44 or warrant; and

45 (c) The date of recording and the recording number, the book and page number for the record-

ing, or the volume and page number for the recording.

(3) For the purposes of this section:

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

(b) "Complainant or claimant" means a person in favor of which [a board] an order has been recorded under the provisions of ORS 671.707 or 701.153.

SECTION 15. ORS 279A.010 is amended to read:

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

(a) "Bidder" means a person that submits a bid in response to an invitation to bid.

(b) "Contracting agency" means a public body authorized by law to conduct a procurement. "Contracting agency" includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf. "Contracting agency" does not include the judicial department or the legislative department.

(c) "Days" means calendar days.

(d) "Department" means the Oregon Department of Administrative Services.

(e) "Director" means the Director of the Oregon Department of Administrative Services or a person designated by the director to carry out the authority of the director under the Public Contracting Code.

(f) "Emergency" means circumstances that:

(A) Could not have been reasonably foreseen;

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

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

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

(h) "Executive department" has the meaning given that term in ORS 174.112.

(i) "Goods" includes supplies, equipment, materials, personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, and combinations of any of the items identified in this paragraph.

(j) "Goods and services" or "goods or services" includes combinations of any of the items identified in the definitions of "goods" and "services."

(k)(A) "Grant" means:

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

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

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

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

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

19 (p) "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 (q) "Local government" has the meaning given that term in ORS 174.116.

23 (r) "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 (s) "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 (t) "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 (u) "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 (v) "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 (w) "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 (x) "Proposer" means a person that submits a proposal in response to a request for proposals.

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

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

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

16 (cc) "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 (dd) "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 (ee) "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 (ff) "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 (gg) "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 (hh) "Recycled PETE" means post-consumer polyethylene terephthalate material.

35 (ii) "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 (jj) "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 (kk) "Services" mean services other than personal services designated under ORS 279A.055, ex-
3 cept that, for state contracting agencies with procurement authority under ORS 279A.050 or
4 279A.140, "services" includes personal services as designated by the state contracting agencies.

5 (LL) "Special government body" has the meaning given that term in ORS 174.117.

6 (mm) "State agency" means the executive department, except the Secretary of State and the
7 State Treasurer in the performance of the duties of their constitutional offices.

8 (nn) "State contracting agency" means an executive department entity authorized by law to
9 conduct a procurement.

10 (oo) "State government" has the meaning given that term in ORS 174.111.

11 (pp) "Used oil" has the meaning given that term in ORS 459A.555.

12 (qq) "Virgin oil" means oil that has been refined from crude oil and that has not been used or
13 contaminated with impurities.

14 (2) Other definitions appearing in the Public Contracting Code and the sections in which they
15 appear are:

- 16
- 17 (a) "Adequate"ORS 279C.305
- 18 (b) "Administering contracting
19 agency"ORS 279A.200
- 20 (c) "Affirmative action".....ORS 279A.100
- 21 (d) "Architect"ORS 279C.100
- 22 (e) "Architectural, engineering
23 and land surveying
24 services"ORS 279C.100
- 25 (f) "Bid documents"ORS 279C.400
- 26 (g) "Bidder"ORS 279B.415
- 27 (h) "Bids"ORS 279C.400
- 28 (i) "Brand name"ORS 279B.405
- 29 (j) "Brand name or equal
30 specification"ORS 279B.200
- 31 (k) "Brand name
32 specification"ORS 279B.200
- 33 (L) "Class special
34 procurement"ORS 279B.085
- 35 (m) "Consultant"ORS 279C.115
- 36 (n) "Contract-specific
37 special procurement"ORS 279B.085
- 38 (o) "Cooperative
39 procurement"ORS 279A.200
- 40 (p) "Cooperative procurement
41 group"ORS 279A.200
- 42 (q) "Donee"ORS 279A.250
- 43 (r) "Engineer"ORS 279C.100
- 44 (s) "Findings"ORS 279C.330
- 45 (t) "Fire protection

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

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

SECTION 16. ORS 279B.130 is amended to read:

279B.130. (1)(a) A contracting agency may debar a prospective bidder or proposer from consideration for award of the contracting agency’s contracts for the reasons listed in subsection (2) of this section after providing the prospective bidder or proposer with notice and a reasonable opportunity to be heard.

(b) A contracting agency may not debar a prospective bidder or proposer under this section for more than three years.

(2) A prospective bidder or proposer may be debarred from consideration for award of a contracting agency’s contracts if:

(a) The prospective bidder or proposer has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract.

(b) The prospective bidder or proposer has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective bidder’s or proposer’s responsibility as a contractor.

(c) The prospective bidder or proposer has been convicted under state or federal antitrust statutes.

(d) The prospective bidder or proposer has committed a violation of a contract provision that is regarded by the contracting agency or the [*Construction Contractors Board*] **Department of Consumer and Business Services** to be so serious as to justify disqualification. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment.

(e) The prospective bidder or proposer does not carry workers’ compensation or unemployment insurance as required by statute.

(3) A contracting agency shall issue a written decision to debar a prospective bidder or proposer under this section. The decision must:

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

(b) Inform the debarred prospective bidder or proposer of the appeal rights of the prospective bidder or proposer under ORS 279B.425.

1 (4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise
 2 furnished immediately to the debarred prospective bidder or proposer.

3 (5) A prospective bidder or proposer that wishes to appeal debarment shall, within three busi-
 4 ness days after receipt of notice of debarment, notify the contracting agency that the prospective
 5 bidder or proposer appeals the debarment as provided in ORS 279B.425.

6 **SECTION 17.** ORS 279C.365 is amended to read:

7 279C.365. (1) A contracting agency preparing solicitation documents for a public improvement
 8 contract shall, at a minimum, include:

9 (a) The public improvement project;

10 (b) The office where the specifications for the project may be reviewed;

11 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
 12 or classes of work for which bidders must be prequalified if prequalification is a requirement;

13 (d) The date and time after which bids will not be received, which must be at least five days
 14 after the date of the last publication of the advertisement, and may, in the sole discretion of the
 15 contracting agency, direct or permit the submission and receipt of bids by electronic means;

16 (e) The name and title of the person designated for receipt of bids;

17 (f) The date, time and place that the contracting agency will publicly open the bids;

18 (g) A statement that, if the contract is for a public works project subject to the state prevailing
 19 rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the
 20 Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, no
 21 bid will be received or considered by the contracting agency unless the bid contains a statement
 22 by the bidder that ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq. will be complied with;

23 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined
 24 in ORS 279A.120;

25 (i) A statement that the contracting agency may reject any bid not in compliance with all pre-
 26 scribed public contracting procedures and requirements and may reject for good cause all bids upon
 27 a finding of the agency that it is in the public interest to do so;

28 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS
 29 468A.720; and

30 (k) A statement that a bid for a public improvement contract may not be received or considered
 31 by the contracting agency unless the bidder is licensed by the [*Construction Contractors Board*]
 32 **Department of Consumer and Business Services under ORS chapter 701** or by the State
 33 Landscape Contractors Board.

34 (2) A contracting agency may provide solicitation documents by electronic means.

35 (3) All bids made to the contracting agency under ORS 279C.335 or 279C.400 must be:

36 (a) In writing;

37 (b) Filed with the person designated for receipt of bids by the contracting agency; and

38 (c) Opened publicly by the contracting agency immediately after the deadline for submission of
 39 bids.

40 (4) After having been opened, the bids must be made available for public inspection.

41 (5) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS
 42 706.008, cashier's check or certified check of each bidder shall be submitted with or posted for all
 43 bids as bid security unless the contract for which a bid is submitted has been exempted from this
 44 requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the
 45 contract.

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

SECTION 18. ORS 279C.375 is amended to read:

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

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

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

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

(b) Determine whether the bidder has met the standards of responsibility. In making the determination, the contracting agency shall consider whether a bidder has:

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

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

(C) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

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

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

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

RESPONSIBILITY DETERMINATION FORM

Project Name: _____

Bid Number: _____

Business Entity Name: _____

[CCB] **Construction Contractor** License Number: _____

Form Submitted By (Contracting Agency): _____

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

2 Title: _____

3 Date: _____

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

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

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

14 [] Determined whether the bidder has
15 met the standards of responsibility.
16 In so doing, the contracting agency
17 has considered whether the bidder:

18 [] Has available the appropriate
19 financial, material, equipment,
20 facility and personnel resources
21 and expertise, or the ability to
22 obtain the resources and
23 expertise, necessary to meet
24 all contractual responsibilities.

25 [] Has a satisfactory record of
26 performance.

27 [] Has a satisfactory record of
28 integrity.

29 [] Is qualified legally to contract
30 with the contracting agency.

31 [] Has supplied all necessary
32 information in connection with
33 the inquiry concerning
34 responsibility.

35 [] Determined the bidder to be
36 (check one of the following):

37 [] Responsible under ORS 279C.375
38 (3)(a) and (b).

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

41 (Attach documentation if the contracting agency finds the bidder not to be responsible.)
42 _____

43
44 (d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the
45 [*Construction Contractors Board*] **Department of Consumer and Business Services** within 30 days

1 after the date the contracting agency awards the contract.

2 (4) The successful bidder shall:

3 (a) Promptly execute a formal contract; and

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

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

8 (6) A contracting agency may not exclude a commercial contractor from competing for a public
9 contract on the basis that the license issued by the [*Construction Contractors Board*] **Department**
10 **of Consumer and Business Services under ORS chapter 701** is endorsed as a level 1 or level 2
11 license. As used in this section, “commercial contractor” has the meaning given that term in ORS
12 701.005.

13 **SECTION 19.** ORS 279C.400 is amended to read:

14 279C.400. (1) When authorized or required by an exemption granted under ORS 279C.335, a
15 contracting agency may solicit and award a public improvement contract, or may award multiple
16 public improvement contracts when specified in the request for proposals, by requesting and evalu-
17 ating competitive proposals. A contract awarded under this section may be amended only in ac-
18 cordance with rules adopted under ORS 279A.065.

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

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

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

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

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

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

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

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

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

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

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

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

36 (5) The contracting agency may require proposal security that serves the same function with
37 respect to proposals as bid security serves with respect to bids under ORS 279C.365 (5) and
38 279C.385, as follows:

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

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

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

1 (6) In all other respects, and subject to rules adopted under ORS 279A.065, references in this
 2 chapter to invitations to bid, bids or bidders shall, to the extent practicable within the proposal
 3 process, be deemed equally applicable to requests for proposals, proposals or proposers. However,
 4 notwithstanding ORS 279C.375 (1), a contracting agency may not be required to award a contract
 5 advertised under the competitive proposal process based on price, but may award the contract in
 6 accordance with ORS 279C.410 (8).

7 **SECTION 20.** ORS 279C.440 is amended to read:

8 279C.440. (1)(a) A contracting agency may disqualify a person from consideration for award of
 9 the contracting agency's contracts for the reasons listed in subsection (2) of this section after pro-
 10 viding the person with notice and a reasonable opportunity to be heard.

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

17 (c) A contracting agency or the [*Construction Contractors Board*] **Department of Consumer**
 18 **and Business Services** may not disqualify a person under this section for a period of more than
 19 three years.

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

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

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

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

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

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

38 (3) A contracting agency or the [*Construction Contractors Board*] **Department of Consumer**
 39 **and Business Services** shall issue a written decision to disqualify a person under this section. The
 40 decision shall:

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

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

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

44 or

45 (B) ORS chapter 183 if the decision to disqualify was issued by the [*Construction Contractors*

1 *Board*] **department.**

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

4 **SECTION 21.** ORS 279C.515 is amended to read:

5 279C.515. (1) Every public improvement contract shall contain a clause or condition that, if the
6 contractor fails, neglects or refuses to make prompt payment of any claim for labor or services
7 furnished to the contractor or a subcontractor by any person in connection with the public im-
8 provement contract as the claim becomes due, the proper officer or officers representing the state
9 or a county, school district, municipality, municipal corporation or subdivision thereof, as the case
10 may be, may pay such claim to the person furnishing the labor or services and charge the amount
11 of the payment against funds due or to become due the contractor by reason of the contract.

12 (2) Every public improvement contract shall contain a clause or condition that, if the contractor
13 or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor
14 or materials in connection with the public improvement contract within 30 days after receipt of
15 payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall
16 owe the person the amount due plus interest charges commencing at the end of the 10-day period
17 that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is sub-
18 ject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the con-
19 tractor or first-tier subcontractor on the amount due shall equal three times the discount rate on
20 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that
21 includes Oregon on the date that is 30 days after the date when payment was received from the
22 contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The
23 amount of interest may not be waived.

24 (3) Every public improvement contract and every contract related to the public improvement
25 contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects
26 or refuses to make payment to a person furnishing labor or materials in connection with the public
27 improvement contract, the person may file a complaint with the [*Construction Contractors Board*]
28 **Department of Consumer and Business Services under ORS chapter 701**, unless payment is
29 subject to a good faith dispute as defined in ORS 279C.580.

30 (4) The payment of a claim in the manner authorized in this section does not relieve the con-
31 tractor or the contractor's surety from obligation with respect to any unpaid claims.

32 **SECTION 22.** ORS 279C.585 is amended to read:

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

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

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

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

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

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

3 (6) When the disclosed subcontractor does not hold a license from the [*Construction Contractors*
4 *Board*] **Department of Consumer and Business Services** and is required to be licensed by [*the*
5 *board*] **that department**.

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

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

11 (9) When the substitution is for good cause. The [*Construction Contractors Board*] **Department**
12 **of Consumer and Business Services** shall define “good cause” by rule. “Good cause” includes but
13 is not limited to the financial instability of a subcontractor. The definition of “good cause” must
14 reflect the least-cost policy for public improvements established in ORS 279C.305.

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

17 **SECTION 23.** ORS 279C.585, as amended by section 45, chapter 836, Oregon Laws 2007, is
18 amended to read:

19 279C.585. A contractor whose bid is accepted may substitute a first-tier subcontractor that was
20 not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason
21 for the substitution in writing to the contracting agency. A contractor may substitute a first-tier
22 subcontractor under this section in the following circumstances:

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

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

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

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

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

34 (6) When the disclosed subcontractor does not hold a license from, or has a license that is not
35 properly endorsed by, the [*Construction Contractors Board*] **Department of Consumer and Busi-**
36 **ness Services** and is required to be licensed by [*the board*] **that department**.

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

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

42 (9) When the substitution is for good cause. The [*Construction Contractors Board*] **Department**
43 **of Consumer and Business Services** shall define “good cause” by rule. “Good cause” includes but
44 is not limited to the financial instability of a subcontractor. The definition of “good cause” must
45 reflect the least-cost policy for public improvements established in ORS 279C.305.

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

3 **SECTION 24.** ORS 279C.590 is amended to read:

4 279C.590. (1)(a) A subcontractor disclosed under ORS 279C.370 may file a complaint based on the
 5 subcontractor disclosure requirements under ORS 279C.370 with the [*Construction Contractors*
 6 *Board*] **Department of Consumer and Business Services** about a contractor if the contractor has
 7 substituted another subcontractor for the complaining subcontractor.

8 (b) If more than one subcontractor files a complaint with the [*board*] **department** under para-
 9 graph (a) of this subsection relating to a single subcontractor disclosure, the [*board*] **department**
 10 shall consolidate the complaints into one proceeding. If the [*board*] **department** imposes a civil
 11 penalty under this section against a contractor, the amount collected by the [*board*] **department**
 12 shall be divided evenly among all of the complaining subcontractors.

13 (c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a
 14 deposit of \$500 with the [*board*] **department** upon filing the complaint.

15 (d) If the [*board*] **department** determines that a contractor's substitution was not in compliance
 16 with ORS 279C.585, the [*board*] **department** shall return the full amount of the deposit posted under
 17 paragraph (c) of this subsection to the complaining subcontractor.

18 (e) If the [*board*] **department** determines that a contractor has not substituted a subcontractor
 19 or that the contractor's substitution was in compliance with ORS 279C.585, the [*board*] **department**
 20 shall award the contractor \$250 of the deposit and shall retain the other \$250, which may be ex-
 21 pended by the [*board*] **department for the purpose described in ORS 701.255.**

22 (2) Upon receipt of a complaint under subsection (1) of this section, the [*board*] **Department**
 23 **of Consumer and Business Services** shall investigate the complaint. If the [*board*] **department**
 24 determines that a contractor has substituted a subcontractor in a manner not in compliance with
 25 ORS 279C.585, the [*board*] **department** may impose a civil penalty against the contractor under
 26 subsections (3) to (5) of this section. Civil penalties under this section shall be imposed in the man-
 27 ner provided under ORS 183.745.

28 (3) If the [*board*] **Department of Consumer and Business Services** imposes a civil penalty
 29 under subsection (2) of this section and it is the first time the [*board*] **department** has imposed a
 30 civil penalty under subsection (2) of this section against the contractor during a three-year period,
 31 the [*board*] **department** shall:

32 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract
 33 bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less.
 34 Amounts collected by the [*board*] **department** under this paragraph shall be awarded to the com-
 35 plaining subcontractor or subcontractors; and

36 (b) Impose a civil penalty on the contractor of up to \$1,000. **Notwithstanding ORS 701.992,**
 37 amounts collected by the [*board*] **department** under this paragraph shall be retained by the
 38 [*board*] **department** and may be expended by the [*board*] **department for the purposes described**
 39 **in ORS 701.255.**

40 (4) If the [*board*] **Department of Consumer and Business Services** imposes a civil penalty
 41 under subsection (2) of this section and it is the second time the [*board*] **department** has imposed
 42 a civil penalty under subsection (2) of this section against the contractor during a three-year period,
 43 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. **Notwithstanding ORS 701.992**,
 5 amounts collected by the [board] **department** under this paragraph shall be retained by the
 6 [board] **department** and may be expended by the [board] **department for the purposes described**
 7 **in ORS 701.255.**

8 (5) If the [board] **Department of Consumer and Business Services** imposes a civil penalty
 9 under subsection (2) of this section and the [board] **department** has imposed a civil penalty under
 10 subsection (2) of this section against the contractor three or more times during a three-year period,
 11 the [board] **department** may:

12 (a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract
 13 bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less.
 14 Amounts collected by the [board] **department** under this paragraph shall be awarded to the com-
 15 plaining subcontractor or subcontractors; and

16 (b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on
 17 the list established under ORS 701.227 for up to one year. **Notwithstanding ORS 701.992**, amounts
 18 collected by the [board] **department** under this paragraph shall be retained by the [board] **depart-**
 19 **ment** and may be expended by the [board] **department for the purpose described in ORS**
 20 **701.255.**

21 (6) Within 10 working days after receiving a complaint under subsection (1) of this section, the
 22 [board] **Department of Consumer and Business Services** shall notify, in writing, any contracting
 23 agency that is a party to the contract for which the complaint has been filed that the complaint has
 24 been filed.

25 **SECTION 25.** ORS 279C.600 is amended to read:

26 279C.600. (1) A person claiming to have supplied labor or materials for the performance of the
 27 work provided for in a public contract, including any person having a direct contractual relationship
 28 with the contractor furnishing the payment bond or a direct contractual relationship with any sub-
 29 contractor, or an assignee of such person, or a person claiming moneys due the State Accident In-
 30 surance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of
 31 Revenue in connection with the performance of the contract, has a right of action on the contrac-
 32 tor's payment bond as provided for in ORS 279C.380 and 279C.400 only if:

33 (a) The person or the assignee of the person has not been paid in full; and

34 (b) The person gives written notice of claim, as prescribed in ORS 279C.605, to the contractor
 35 and the contracting agency.

36 (2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has re-
 37 ceived information indicating that one or more workers providing labor on a public works have not
 38 been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of
 39 action first on the contractor's public works bond required under ORS 279C.836 and then, for any
 40 amount of a claim not satisfied by the public works bond, on the contractor's payment bond, as
 41 provided in ORS 279C.380 and 279C.400. When an investigation indicates that a subcontractor's
 42 workers have not been paid in full at the prevailing rate of wage or overtime wages, the commis-
 43 sioner has a right of action first on the subcontractor's public works bond and then, for any amount
 44 of a claim not satisfied by the subcontractor's public works bond, on the contractor's payment bond.
 45 The commissioner's right of action exists without necessity of an assignment and extends to workers

1 on the project who are not identified when the written notice of claim is given, but for whom the
 2 commissioner has received information indicating that the workers have provided labor on the pub-
 3 lic works and have not been paid in full. The commissioner shall give written notice of the claim,
 4 as prescribed in ORS 279C.605, to the contracting agency, the [*Construction Contractors Board*]
 5 **Department of Consumer and Business Services**, the contractor and, if applicable, the subcon-
 6 tractor. The commissioner may not make a claim for the same unpaid wages against more than one
 7 bond under this section.

8 **SECTION 26.** ORS 279C.830 is amended to read:

9 279C.830. (1)(a) Except as provided in paragraph (d) of this subsection, the specifications for
 10 every contract for public works shall contain a provision stating the existing state prevailing rate
 11 of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act
 12 (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the
 13 public works employed in the performance of the contract either by the contractor or subcontractor
 14 or other person doing or contracting to do the whole or any part of the work contemplated by the
 15 contract. When the prevailing rates of wage are available electronically or are accessible on the
 16 Internet, the rates may be incorporated into the specifications by referring to the electronically
 17 accessible or Internet-accessible rates and by providing adequate information about how to access
 18 the rates.

19 (b) If a public agency is required under paragraph (a) of this subsection to include the state and
 20 federal prevailing rates of wage in the specifications, the public agency also shall include in the
 21 specifications information showing which prevailing rate of wage is higher for workers in each trade
 22 or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and In-
 23 dustries under ORS 279C.815 (2)(c).

24 (c) Every contract and subcontract shall contain a provision that the workers shall be paid not
 25 less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

26 (d) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing
 27 state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the
 28 Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a pri-
 29 vate entity for the project. After that time, the specifications for any contract for the public works
 30 shall include the applicable prevailing rate of wage.

31 (2) The specifications for every contract for public works between a public agency and a con-
 32 tractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the
 33 Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a pro-
 34 vision that the fee shall be paid to the commissioner under the administrative rule of the commis-
 35 sioner.

36 (3) The specifications for every contract for public works shall contain a provision stating that
 37 the contractor and every subcontractor must have a public works bond filed with the [*Construction*
 38 *Contractors Board*] **Department of Consumer and Business Services** before starting work on the
 39 project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). Every contract awarded by a con-
 40 tracting agency shall contain a provision requiring the contractor:

41 (a) To have a public works bond filed with the [*Construction Contractors Board*] **department**
 42 before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

43 (b) To include in every subcontract a provision requiring the subcontractor to have a public
 44 works bond filed with the [*Construction Contractors Board*] **department** before starting work on the
 45 project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

SECTION 27. ORS 279C.836 is amended to read:

279C.836. (1) Except as provided in subsection (4), (7), (8) or (9) of this section, before starting work on a contract or subcontract for a public works project, a contractor or subcontractor shall file with the [*Construction Contractors Board*] **Department of Consumer and Business Services** a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontractor, to the [*board*] **Department of Consumer and Business Services** and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for work performed on contracts entered into before the cancellation.

(2) Before permitting a subcontractor to start work on a public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section, has elected not to file a public works bond under subsection (7) or (8) of this section or is exempt under subsection (4) or (9) of this section.

(3) A contractor or subcontractor is not required under this section to file a separate public works bond for each public works project for which the contractor or subcontractor has a contract.

(4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of wage on a public works project is not required to file a public works bond under this section.

(5) A public works bond required by this section is in addition to any other bond the contractor or subcontractor is required to obtain.

(6) The [*board*] **Department of Consumer and Business Services** may, by rule, require a contractor or subcontractor to obtain a new public works bond if a surety pays a claim out of an existing public works bond. The new bond must be in the amount of \$30,000. The [*board*] **department** may allow a contractor or subcontractor to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the existing bond, notwithstanding payment by the surety on the claim.

(7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 may, for up to four years after certification, elect not to file a public works bond as required under subsection (1) this section. If a business enterprise elects not to file a public works bond, the business enterprise shall give the [*board*] **Department of Consumer and Business Services** written verification of the certification and written notice that the business enterprise elects not to file the bond.

(b) A business enterprise that elects not to file a public works bond under this subsection shall notify the public agency for whose benefit the contract was awarded or, if the business enterprise is a subcontractor, the contractor of the election before starting work on a public works project. When a business enterprise elects not to file a public works bond under this subsection, a claim for unpaid wages may be made against the payment bond of the business enterprise or, if the business enterprise is a subcontractor, the payment bond of the contractor.

(c) An election not to file a public works bond expires four years after the date the business enterprise is certified. After an election has expired and before starting or continuing work on a

1 contract or subcontract for a public works project, the business enterprise shall file a public works
2 bond with the [board] **department** as required under subsection (1) of this section.

3 (8) A contractor or subcontractor may elect not to file a public works bond as required under
4 subsection (1) of this section for any public works project for which the contract price does not
5 exceed \$100,000.

6 (9) In cases of emergency, or when the interest or property of the public agency for whose
7 benefit the contract was awarded probably would suffer material injury by delay or other cause, the
8 requirement for filing a public works bond may be excused, if a declaration of the emergency is
9 made in accordance with rules adopted under ORS 279A.065.

10 (10) The [board] **Department of Consumer and Business Services** shall make available on a
11 searchable public website information concerning public works bonds filed with the [board] **de-**
12 **partment**, claims made on those bonds, elections made by certified business enterprises not to file
13 those bonds and the expiration date of each election. The [board] **department** may adopt rules
14 necessary to perform the duties required of the [board] **department** by this section.

15 (11) The Commissioner of the Bureau of Labor and Industries, with approval of the [board] **De-**
16 **partment of Consumer and Business Services**, shall adopt rules that establish language for public
17 works bonds.

18 **SECTION 28.** ORS 448.279 is amended to read:

19 448.279. (1) The Department of Human Services by rule shall establish a certification program
20 for persons who inspect cross connections or test backflow assemblies. The program shall include
21 minimum qualifications necessary for a person to be certified to:

22 (a) Conduct a cross connection inspection; and

23 (b) Test a backflow assembly.

24 (2) Except for an employee of a water supplier as defined in ORS 448.115, a person certified
25 under this section must:

26 (a) Become licensed as a construction contractor with the [*Construction Contractors Board*]
27 **Department of Consumer and Business Services** as provided under ORS chapter 701; or

28 (b) Be employed by a landscape contracting business licensed under ORS 671.510 to 671.760.

29 (3) In conjunction with the certification program established under subsection (1) of this section,
30 the Department of **Human Services** may establish and collect a fee from an individual requesting
31 certification under the program. A fee imposed under this subsection:

32 (a) Is not refundable; and

33 (b) May not exceed the cost of administering the certification program of the department for
34 which purpose the fee is established, as authorized by the Legislative Assembly within the budget
35 of the department and as the budget may be modified by the Emergency Board.

36 (4) The department may not require a journeyman plumber licensed under ORS chapter 693 or
37 an apprentice plumber, as defined in ORS 693.010, to obtain a certification for testing backflow as-
38 semblies under the program established under this section.

39 (5) All moneys collected by the department under this section shall be deposited in the General
40 Fund to the credit of an account of the department. Such moneys are continuously appropriated to
41 the department to pay the cost of administering the certification program established pursuant to
42 this section and the cost of administering water system cross connection and backflow assembly
43 programs.

44 **SECTION 29.** ORS 454.715 is amended to read:

45 454.715. Subject to ORS chapter 183, the Department of Environmental Quality at any time may

1 suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

2 (1) A material misrepresentation or false statement in the application for the license.

3 (2) Failure to comply with the applicable provisions of this chapter.

4 (3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal
5 services.

6 (4) The licensee was licensed by the [*Construction Contractors Board*] **Department of Con-**
7 **sumer and Business Services** at the time of licensing under ORS 454.695 and the license issued
8 by the [*board*] **Department of Consumer and Business Services** was revoked or suspended [*as*
9 *provided under ORS 701.102 or 701.106 and rules adopted by the board*].

10 **SECTION 30.** ORS 455.125 is amended to read:

11 455.125. [(1)] In addition to any other sanction, remedy or penalty provided by law, the Director
12 of the Department of Consumer and Business Services or an appropriate advisory board may deny,
13 suspend, condition or revoke a registration, certification, license or other authority to perform work
14 or conduct business issued under laws administered by the Department of Consumer and Business
15 Services or advisory board if the holder:

16 [(a)] (1) Fails to comply with a provision of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395
17 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670 or this chapter or ORS chapter 447, 460
18 or 693, or with any rule adopted under those statutes or under ORS 455.117; or

19 [(b)] (2) Engages in an act for which the [*Construction Contractors Board*] **department** imposes
20 a sanction on the holder under ORS 701.098.

21 [(2) *For purposes of ORS 701.100, a compliance failure described in subsection (1)(a) of this section*
22 *for which the director or an advisory board denies, suspends, conditions or revokes a registration,*
23 *certification, license or other authority to perform work or conduct business may be treated as a failure*
24 *to be in conformance with this chapter.*]

25 **SECTION 31.** ORS 455.129 is amended to read:

26 455.129. (1) Subject to ORS chapter 183, except as provided in subsection (4) of this section, a
27 regulatory body listed in subsection (2) of this section may deny a license, certificate, registration
28 or application or may suspend, revoke, condition or refuse to renew a license, certificate or regis-
29 tration if the regulatory body finds that the licensee, certificate holder, registrant or applicant:

30 (a) Has failed to comply with the laws administered by the regulatory body or with the rules
31 adopted by the regulatory body.

32 (b) Has failed to comply with an order of the regulatory body or the Director of the Department
33 of Consumer and Business Services, including but not limited to the failure to pay a civil penalty.

34 (c) Has filed an application for a license, certificate or registration that, as of the date the li-
35 cense, certificate or registration was issued or the date of an order denying the application, was
36 incomplete in any material respect or contained a statement that, in light of the circumstances un-
37 der which it was made, was incorrect or misleading in any respect.

38 (d) Has performed work without appropriate licensing, certification or registration or has em-
39 ployed individuals to perform work without appropriate licensing, certification or registration.

40 (e) Has failed to meet any condition or requirement to obtain or maintain a license, certificate
41 or registration.

42 (f) Has acted in a manner creating a serious danger to the public health or safety.

43 (g) Has been subject to a revocation, cancellation or suspension order or to other disciplinary
44 action by the [*Construction Contractors Board*] **Department of Consumer and Business Services**
45 **under ORS chapter 701** or has failed to pay a civil penalty imposed by the [*board*] **department**

1 **under ORS chapter 701.**

2 (h) Has been subject to a revocation, cancellation or suspension order or to other disciplinary
3 action by another state in regard to construction standards, permit requirements or construction-
4 related licensing violations or has failed to pay a civil penalty imposed by the other state in regard
5 to construction standards, permit requirements or construction-related licensing violations.

6 (i) Has, while performing work that requires or that is related to work that requires a valid li-
7 cense or certificate under ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 479.510 to
8 479.945, 479.950 or 480.510 to 480.670, this chapter or ORS chapter 447, 460 or 693, violated any
9 statute or rule related to the state building code.

10 (j) Is a business, the owner or an officer of which has an outstanding obligation to pay a civil
11 penalty assessed under ORS 455.895 or has been the subject of action against the license, certificate
12 or registration by the department [*of Consumer and Business Services*], the director or any advisory
13 board.

14 (k) Is a business, owner or officer of a reorganized business entity as defined in ORS 657.682,
15 if an owner, officer, shareholder or partner of the reorganized business entity, or a member if the
16 reorganized business entity is a member-managed limited liability company, has been subject to a
17 revocation or suspension order or to a condition or civil penalty under ORS 446.003 to 446.200,
18 446.225 to 446.285, 446.395 to 446.420, 479.510 to 479.945, 479.950 or 480.510 to 480.670, this chapter
19 or ORS chapter 447, 460, 693 or 701, or by another state in regard to construction standards, permit
20 requirements or construction-related licensing violations.

21 (L) Is ordered to pay damages under a judgment or arbitration award that relates to con-
22 struction and that has become final by operation of law or on appeal.

23 (m) Is a business, the owner or an officer of which was an owner or officer in another business
24 at the time:

25 (A) The other business was assessed a civil penalty under ORS 455.895 that remains unpaid; or

26 (B) An act or failure to act by any owner or officer of the other business resulted in action
27 being taken against the license, certificate or registration of the other business by the department,
28 the director or any advisory board.

29 (2) Subsection (1) of this section applies to:

30 (a) The State Plumbing Board for purposes of licenses issued under ORS 447.010 to 447.156 or
31 ORS chapter 693.

32 (b) The Electrical and Elevator Board for purposes of licenses issued under ORS 446.210 or
33 479.510 to 479.945.

34 (c) The Board of Boiler Rules for purposes of licenses issued under ORS 480.510 to 480.670.

35 (d) The department for purposes of licenses issued under this chapter.

36 (e) The department, subject to Electrical and Elevator Board approval, for purposes of licenses
37 issued under ORS 460.005 to 460.175.

38 (f) The department, subject to Manufactured Structures and Parks Advisory Board approval, for
39 purposes of licenses, certificates and registrations issued under ORS 446.003 to 446.200, 446.225 to
40 446.285 and 446.395 to 446.420.

41 (3) The department may administer and enforce subsection (1) of this section in the same manner
42 and to the same extent as any advisory board.

43 (4) This section does not apply to licenses, certificates, registrations or applications for
44 licensure, certification or registration involving inspectors or involving persons engaged in the
45 manufacture, conversion or repair of prefabricated structures, prefabricated components or recre-

1 ational vehicles.

2 **SECTION 32.** 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 under ORS**
14 **chapter 701** during the preceding 60 months as a general contractor; or

15 (b) Continuously licensed by the [*Construction Contractors Board*] **department under ORS**
16 **chapter 701** during at least the preceding 24 months as a general contractor and by one or more
17 other states during the balance of the preceding 60 months in an occupation equivalent to that of
18 a general contractor.

19 (6) "Regular employee" means a person who:

20 (a) Is continuously employed by, and on the regular payroll of, a qualified construction company;

21 (b) Has filed a withholding exemption certificate pursuant to ORS 316.182 for work performed
22 for the qualified construction company; and

23 (c) Is available during working hours to supervise on-site dwelling construction, including but
24 not limited to supervising the installation of:

25 (A) Drywall;

26 (B) Electrical systems;

27 (C) Footings;

28 (D) Foundations;

29 (E) Framing;

30 (F) Insulation;

31 (G) Mechanical systems;

32 (H) Plumbing systems; and

33 (I) Stairs.

34 (7) "Whole dwelling remodel" means a project that includes the installation in an existing
35 dwelling of all of the following:

36 (a) Drywall;

37 (b) Electrical systems;

38 (c) Footings;

39 (d) Foundations;

40 (e) Framing;

41 (f) Insulation;

42 (g) Mechanical systems; and

43 (h) Plumbing systems.

44 **SECTION 33.** ORS 455.805 is amended to read:

45 455.805. An individual may apply to the Department of Consumer and Business Services to be

1 tested and certified as a master builder. The department shall establish uniform criteria for use in
 2 determining whether to grant an application. The criteria must, at a minimum, provide that:

3 (1) The individual must be an owner or regular employee of a qualified construction company
 4 and be authorized by the company to provide assurance to the department that all state and local
 5 code requirements are met.

6 (2) In each of the five preceding calendar years, the individual must either have performed or
 7 supervised a dwelling construction or whole dwelling remodel. In at least two of the years, the
 8 construction or remodel must have occurred in a geographic area that had a master builder pro-
 9 gram.

10 (3) The individual must have completed a program sponsored by a local building trade committee
 11 or other program approved by the department, providing training relating to the construction of one
 12 and two family dwellings under the Low-Rise Residential Dwelling Code. A program must include
 13 but need not be limited to instruction in:

- 14 (a) Administration;
- 15 (b) Chimneys and fireplaces;
- 16 (c) Decay and termite protections;
- 17 (d) Energy conservation;
- 18 (e) Footings and foundations;
- 19 (f) Roof-ceiling construction;
- 20 (g) Roof coverings;
- 21 (h) Site inspections;
- 22 (i) Wall construction, assemblies and coverings; and
- 23 (j) Wood and metal framing.

24 (4) The individual must have scored at least 75 percent on a written examination, approved and
 25 administered by the department, covering the appropriate aspects of the Low-Rise Residential
 26 Dwelling Code.

27 (5)(a) The individual must not be the subject of an adverse final order issued by the [*Con-*
 28 *struction Contractors Board or*] Department of Consumer and Business Services based upon acts
 29 committed within 36 months preceding the application date that:

- 30 (A) Violated a specialty code, licensing or permit requirement; or
- 31 (B) Resulted in a claim being filed with the [*board or*] department against the individual.

32 (b) For purposes of this subsection, if the individual is an owner of a qualified construction
 33 company, an adverse final order issued against the company is an adverse final order issued against
 34 that individual.

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

36 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following
 37 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise
 38 Residential Dwelling Code:

- 39 (a) Prewiring of cable television and telephone systems owned by the owner of the residence;
- 40 (b) Garage door openers;
- 41 (c) Vacuum systems;
- 42 (d) Audio and stereo systems;
- 43 (e) HVAC;
- 44 (f) Landscape sprinkler controls;
- 45 (g) Landscape lighting; and

1 (h) Doorbells.

2 (2) The provisions of subsection (1) of this section apply only to persons or businesses licensed
 3 **by the Department of Consumer and Business Services under ORS chapter 701** and in good
 4 standing with the [*Construction Contractors Board*] **department**.

5 (3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a landscape contracting
 6 business licensed under ORS 671.510 to 671.760 when making installations of landscape irrigation
 7 control wiring and outdoor landscape lighting involving a Class II or Class III system that does not
 8 exceed 30 volts and 750 volt-amperes.

9 (b) A landscape contracting business exempt from licensing under this subsection shall issue an
 10 identification card to its landscape irrigation control wiring or outdoor landscape lighting installer.
 11 The form for the identification card shall be provided by the State Landscape Contractors Board.
 12 The identification card shall include the name of the installer, the name and State Landscape Con-
 13 tractors Board identification number of the landscape contracting business and the date of issue of
 14 the identification card. The card shall be carried by the installer at the job site when performing
 15 the allowed electric installations.

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

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

25 **SECTION 35.** ORS 479.940, as amended by section 46, chapter 836, Oregon Laws 2007, is
 26 amended to read:

27 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following
 28 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise
 29 Residential Dwelling Code:

- 30 (a) Prewiring of cable television and telephone systems owned by the owner of the residence;
- 31 (b) Garage door openers;
- 32 (c) Vacuum systems;
- 33 (d) Audio and stereo systems;
- 34 (e) HVAC;
- 35 (f) Landscape sprinkler controls;
- 36 (g) Landscape lighting; and
- 37 (h) Doorbells.

38 (2) The provisions of subsection (1) of this section apply only to residential contractors holding
 39 a current license and proper endorsement issued by the [*Construction Contractors Board*] **Depart-**
 40 **ment of Consumer and Business Services under ORS chapter 701**.

41 (3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a landscape contracting
 42 business licensed under ORS 671.510 to 671.760 when making installations of landscape irrigation
 43 control wiring and outdoor landscape lighting involving a Class II or Class III system that does not
 44 exceed 30 volts and 750 volt-amperes.

45 (b) A landscape contracting business exempt from licensing under this subsection shall issue an

1 identification card to its landscape irrigation control wiring or outdoor landscape lighting installer.
 2 The form for the identification card shall be provided by the State Landscape Contractors Board.
 3 The identification card shall include the name of the installer, the name and State Landscape Con-
 4 tractors Board identification number of the landscape contracting business and the date of issue of
 5 the identification card. The card shall be carried by the installer at the job site when performing
 6 the allowed electric installations.

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

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

16 **SECTION 36.** ORS 479.945 is amended to read:

17 479.945. (1) A restricted energy contractor's license is created for persons engaged in HVAC and
 18 such other categories as established by the Electrical and Elevator Board by rule under ORS
 19 455.117.

20 (2) A person licensed as a restricted energy contractor under this section and the person's em-
 21 ployees may install, alter, maintain, replace or repair electrical wiring and electrical products that
 22 are within the scope of the contractor's license issued under this section. A person covered by this
 23 subsection does not have to obtain a license under ORS 479.910.

24 (3) The license issued under this section shall limit the scope of activities that the licensee and
 25 licensee's employees may engage in and in no instance may the scope of the license exceed that of
 26 a Class B limited energy technician.

27 (4) A person applying for licensing under this section shall pay the applicable application fee
 28 required under ORS 479.840 and provide proof satisfactory to the board that the person has experi-
 29 ence of the type of work covered by the license indorsement.

30 (5) A restricted energy contractor licensee under this section shall:

31 (a) Maintain with the board a current list of all individuals employed by the licensee to engage
 32 in work permitted by this section;

33 (b) Issue an identification card to each employee working under the provisions of this section
 34 and identify the contractor, date of issue, contractor's identification number with the board and the
 35 [*Construction Contractors Board*] **construction contractor identification number with the De-**
 36 **partment of Consumer and Business Services;** and

37 (c) Maintain with the board a current form of identification card used by the contractor.

38 (6) A person holding a limited maintenance specialty contractor's license under ORS 479.630 (12)
 39 who also registers under this section shall comply with the identification card requirements of sub-
 40 section (5) of this section, but need not file a separate list of employees unless the work under the
 41 contractor's license is done by different employees.

42 **SECTION 37.** ORS 657.665 is amended to read:

43 657.665. (1) Except as provided in subsections (2) to (4) of this section, all information in the
 44 records of the Employment Department pertaining to the administration of the unemployment in-
 45 surance, employment service and labor market information programs:

1 (a) Is confidential and for the exclusive use and information of the Director of the Employment
2 Department in administering the unemployment insurance, employment service and labor market
3 information programs in Oregon.

4 (b) May not be used in any court action or in any proceeding pending in the court unless the
5 director or the state is a party to the action or proceeding or unless the proceeding concerns the
6 establishment, enforcement or modification of a support obligation and support services are being
7 provided by the Division of Child Support or the district attorney pursuant to ORS 25.080.

8 (c) Is exempt from disclosure under ORS 192.410 to 192.505.

9 (2) The Employment Department shall disclose information:

10 (a) To any claimant or legal representative, at a hearing before an administrative law judge, to
11 the extent necessary for the proper presentation of an unemployment insurance claim.

12 (b) Upon request to the United States Secretary of Labor. The Employment Department shall
13 disclose the information in a form and containing the information that the United States Secretary
14 of Labor may require. The information disclosed is confidential and may not be used for any other
15 purpose.

16 (c) Pursuant to section 303(a)(7) of the Social Security Act, upon request to any agency of the
17 United States charged with the administration of public works or assistance through public em-
18 ployment. Under this paragraph, the Employment Department shall disclose the name, address, or-
19 dinary occupation and employment status of each recipient of unemployment insurance benefits and
20 a statement of the recipient's right to further benefits under this chapter. The information disclosed
21 is confidential and may not be used for any other purpose.

22 (d) Pursuant to section 303(c)(1) of the Social Security Act, to the Railroad Retirement Board.
23 Under this paragraph, the Employment Department shall disclose unemployment insurance records.
24 The information disclosed is confidential and may not be used for any other purpose. The costs of
25 disclosing information under this paragraph shall be paid by the board.

26 (e) Pursuant to section 303(d) of the Social Security Act, upon request to officers and employees
27 of the United States Department of Agriculture and to officers or employees of any state food stamp
28 agency for the purpose of determining an individual's eligibility for or the amount of food stamps.
29 The information disclosed is confidential and may not be used for any other purpose. The costs of
30 disclosing information under this paragraph shall be paid by the United States Department of Agri-
31 culture.

32 (f) Pursuant to section 303(e)(1) and (2)(A)(ii) of the Social Security Act, to state or local child
33 support enforcement agencies enforcing child support obligations under Title IV-D of the Social Se-
34 curity Act for the purposes of establishing child support obligations, locating individuals owing child
35 support obligations and collecting child support obligations from those individuals. The information
36 disclosed is confidential and may not be used for any other purpose. The costs of disclosing infor-
37 mation under this paragraph shall be paid by the child support enforcement agency.

38 (g) Pursuant to sections 303(f) and 1137 of the Social Security Act, to agencies participating in
39 the income and eligibility verification system for the purpose of verifying an individual's eligibility
40 for benefits, or the amount of benefits, under unemployment insurance, Temporary Assistance for
41 Needy Families, Medicaid, food stamps, Supplemental Security Income, child support enforcement
42 or Social Security programs. The information disclosed is confidential and may not be used for any
43 other purpose. The costs of disclosing information under this paragraph shall be paid by the re-
44 questing agency.

45 (h) Pursuant to section 303(h) of the Social Security Act and section 3304(a)(16)(B) of the Federal

1 Unemployment Tax Act, to the United States Department of Health and Human Services National
2 Directory of New Hires. The information disclosed is confidential and may not be used for any other
3 purpose. The costs of disclosing information under this paragraph shall be paid by the United States
4 Department of Health and Human Services.

5 (i) Pursuant to section 303(i) of the Social Security Act, to officers and employees of the United
6 States Department of Housing and Urban Development and to representatives of a public housing
7 agency for the purpose of determining an individual's eligibility for benefits, or the amount of ben-
8 efits, under a housing assistance program of the United States Department of Housing and Urban
9 Development. The information disclosed is confidential and may not be used for any other purpose.
10 The costs of disclosing information under this paragraph shall be paid by the United States De-
11 partment of Housing and Urban Development or the public housing agency.

12 (j) Pursuant to regulations of the United States Secretary of Health and Human Services issued
13 under section 3304(a)(16)(A) of the Federal Unemployment Tax Act, and except as required by sec-
14 tion 303 of the Social Security Act, to the state, a political subdivision or a federally recognized
15 Indian tribe that has signed an agreement with the Department of Human Services to administer
16 Part A of Title IV of the Social Security Act for the purpose of determining an individual's eligibility
17 for assistance, or the amount of assistance, under a program funded under Part A of Title IV of the
18 Social Security Act. The information disclosed is confidential and may not be used for any other
19 purpose.

20 (k) Upon request, to the United States Attorney's Office. Under this paragraph, the Employment
21 Department may disclose an individual's employment and wage information in response to a federal
22 grand jury subpoena or for the purpose of collecting civil and criminal judgments, including
23 restitution and special assessment fees. The information disclosed is confidential and may not be
24 used for any other purpose. The costs of disclosing information under this paragraph shall be paid
25 by the United States Attorney's Office.

26 (3) The Employment Department may disclose information secured from employing units:

27 (a) To agencies of this state, federal agencies and local government agencies to the extent nec-
28 essary to properly carry out governmental planning, performance measurement, program analysis,
29 socioeconomic analysis and policy analysis functions performed under applicable law. The informa-
30 tion disclosed is confidential and may not be disclosed by the agencies in any manner that would
31 identify individuals, claimants, employees or employing units. If the information disclosed under this
32 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
33 information shall be paid by the agency requesting the information.

34 (b) As part of a geographic information system. Points on a map may be used to represent eco-
35 nomic data, including the location, employment size class and industrial classification of businesses
36 in Oregon. Information presented as part of a geographic information system may not give specific
37 details regarding a business's address, actual employment or proprietary information. If the infor-
38 mation disclosed under this paragraph is not prepared for the use of the Employment Department,
39 the costs of disclosing the information shall be paid by the party requesting the information.

40 (c) In accordance with ORS 657.673.

41 (4) The Employment Department may:

42 (a) Disclose information to public employees in the performance of their duties under state or
43 federal laws relating to the payment of unemployment insurance benefits, the provision of employ-
44 ment services and the provision of labor market information.

45 (b) At the discretion of the Director of the Employment Department and subject to an intera-

1 agency agreement, disclose information to public officials in the performance of their official duties
2 administering or enforcing laws within their authority and to the agents or contractors of public
3 officials. The public official shall agree to assume responsibility for misuse of the information by
4 the official's agent or contractor.

5 (c) Disclose information pursuant to an informed consent, received from an employer or claim-
6 ant, to disclose the information.

7 (d) Disclose information to partners under the federal Workforce Investment Act of 1998 for the
8 purpose of administering state workforce programs under the Act. The information disclosed is
9 confidential and may not be used for any other purpose. The costs of disclosing information under
10 this paragraph shall be paid by the requesting partner.

11 (e) Disclose the names and addresses of employing units to the Bureau of Labor and Industries
12 for the purpose of disseminating information to employing units. The names and addresses disclosed
13 are confidential and may not be used for any other purpose. If the information disclosed under this
14 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
15 information shall be paid by the bureau.

16 (f) Disclose information to the Commissioner of the Bureau of Labor and Industries for the
17 purpose of performing duties under ORS 279C.800 to 279C.870, 658.005 to 658.245 or 658.405 to
18 658.503 or ORS chapter 652, 653 or 659A. The information disclosed may include the names and ad-
19 dresses of employers and employees and payroll data of employers and employees. The information
20 disclosed is confidential and may not be used for any other purpose. If the information disclosed
21 under this paragraph is not prepared for the use of the Employment Department, the costs of dis-
22 closing the information shall be paid by the bureau.

23 (g) Disclose information required under ORS 657.660 (3) and (4) to the Public Employees Re-
24 tirement System for the purpose of determining the eligibility of members of the retirement system
25 for disability retirement allowances under ORS chapter 238. The information disclosed is confiden-
26 tial and may not be used for any other purpose. The costs of disclosing information under this par-
27 agraph shall be paid by the Public Employees Retirement System.

28 (h) Disclose to the Oregon Economic and Community Development Commission information re-
29 quired by the commission in performing its duty under ORS 285A.050 to verify changes in employ-
30 ment levels following direct employer participation in Economic and Community Development
31 Department programs or indirect participation through municipalities under ORS 285B.410 to
32 285B.482 and regional boards and partnerships under ORS 285B.230 to 285B.269. The information
33 disclosed to the commission may include an employer's employment level, total subject wages payroll
34 and whole hours worked. The information disclosed is confidential and may not be used for any
35 other purpose. The commission may not disclose the information in any manner that would identify
36 an employing unit or employee except to the extent necessary to carry out the commission's duty
37 under ORS 285A.050. If the information disclosed under this paragraph is not prepared for the use
38 of the Employment Department, the costs of disclosing the information shall be paid by the com-
39 mission.

40 (i) Disclose information to the Department of Revenue for the purpose of performing its duties
41 under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may
42 include the names and addresses of employers and employees and payroll data of employers and
43 employees. The information disclosed is confidential and may not be disclosed by the Department
44 of Revenue in any manner that would identify an employing unit or employee except to the extent
45 necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any

1 report or return required or permitted to be filed under the revenue and tax laws administered by
2 the department. The Department of Revenue may not disclose any information received to any pri-
3 vate collection agency or for any other purpose. If the information disclosed under this paragraph
4 is not prepared for the use of the Employment Department, the costs of disclosing the information
5 shall be paid by the Department of Revenue.

6 (j) Disclose information to the Department of Consumer and Business Services for the purpose
7 of performing its duties under ORS chapters 654 and 656. The information disclosed may include the
8 name, address, number of employees and industrial classification code of an employer and payroll
9 data of employers and employees. The information disclosed is confidential and may not be disclosed
10 by the Department of Consumer and Business Services in any manner that would identify an em-
11 ploying unit or employee except to the extent necessary to carry out the department's duties under
12 ORS chapters 654 and 656, including administrative hearings and court proceedings in which the
13 Department of Consumer and Business Services is a party. If the information disclosed under this
14 paragraph is not prepared for the use of the Employment Department, the costs of disclosing the
15 information shall be paid by the Department of Consumer and Business Services.

16 (k) Disclose information to the [*Construction Contractors Board*] **Department of Consumer and**
17 **Business Services** for the purpose of performing its duties under ORS chapter 701. The information
18 disclosed [*to the board*] may include the names and addresses of employers and status of their com-
19 pliance with this chapter. If the information disclosed under this paragraph is not prepared for the
20 use of the Employment Department, the costs of disclosing the information shall be paid by the
21 [*board*] **Department of Consumer and Business Services**.

22 (L) Disclose information to the State Fire Marshal to assist the State Fire Marshal in carrying
23 out duties under ORS 453.307 to 453.414. The information disclosed may include the name, address,
24 telephone number and industrial classification code of an employer. The information disclosed is
25 confidential and may not be disclosed by the State Fire Marshal in any manner that would identify
26 an employing unit except to the extent necessary to carry out duties under ORS 453.307 to 453.414.
27 If the information disclosed under this paragraph is not prepared for the use of the Employment
28 Department, the costs of disclosing the information shall be paid by the office of the State Fire
29 Marshal.

30 (m) Disclose information to the Oregon Student Assistance Commission for the purpose of per-
31 forming the commission's duties under ORS chapter 348 and Title IV of the Higher Education Act
32 of 1965. The information disclosed may include the names and addresses of employers and employees
33 and payroll data of employers and employees. The information disclosed is confidential and may not
34 be disclosed by the commission in any manner that would identify an employing unit or employee
35 except to the extent necessary to carry out the commission's duties under ORS chapter 348 or Title
36 IV of the Higher Education Act of 1965. If the information disclosed under this paragraph is not
37 prepared for the use of the Employment Department, the costs of disclosing the information shall
38 be paid by the commission.

39 (n) Disclose information to the Department of Transportation to assist the Department of
40 Transportation in carrying out the duties of the Department of Transportation relating to collection
41 of delinquent and liquidated debts, including taxes, under ORS 184.610 to 184.666, 184.670 to 184.733
42 and 805.263, ORS chapter 319 and the Oregon Vehicle Code. The information disclosed may include
43 the names and addresses of employers and employees and payroll data of employers and employees.
44 The information disclosed is confidential and may not be disclosed by the Department of Transpor-
45 tation in any manner that would identify an employing unit or employee except to the extent nec-

1 essary to carry out the Department of Transportation's duties relating to collection of delinquent
 2 and liquidated debts or in auditing or reviewing any report or return required or permitted to be
 3 filed under the revenue and tax laws administered by the Department of Transportation. The De-
 4 partment of Transportation may not disclose any information received to any private collection
 5 agency or for any other purpose. If the information disclosed under this paragraph is not prepared
 6 for the use of the Employment Department, the costs of disclosing the information shall be paid by
 7 the Department of Transportation.

8 (o) Disclose to any person establishment level information secured pursuant to this chapter from
 9 federal, state and local government employing units. If the information disclosed under this para-
 10 graph is not prepared for the use of the Employment Department, the costs of disclosing the infor-
 11 mation shall be paid by the party requesting the information.

12 (p) Disclose to any person the industrial classification code assigned to an employing unit. If the
 13 information disclosed under this paragraph is not prepared for the use of the Employment Depart-
 14 ment, the costs of disclosing the information shall be paid by the party requesting the information.

15 (5) Any officer appointed by or any employee of the Director of the Employment Department
 16 who discloses confidential information, except with the authority of the director, pursuant to rules
 17 or as otherwise required by law, may be disqualified from holding any appointment or employment
 18 with the Employment Department.

19 (6) Any person or any officer or employee of an entity to whom information is disclosed by the
 20 Employment Department under this section who divulges or uses the information for any purpose
 21 other than that specified in the provision of law or agreement authorizing the use or disclosure may
 22 be disqualified from performing any service under contract or disqualified from holding any ap-
 23 pointment or employment with the state agency that engaged or employed that person, officer or
 24 employee. The Employment Department may immediately cancel or modify any information sharing
 25 agreement with an entity when a person or an officer or employee of that entity discloses confi-
 26 dential information, other than as specified in law or agreement.

27 **SECTION 38.** ORS 670.304 is amended to read:

28 670.304. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following
 29 professional licensing and advisory boards:

30 (1) Professional licensing and advisory boards established in the Office of the Secretary of State.

31 (2) The Oregon Board of Maritime Pilots.

32 (3) The Board of Cosmetology, in the Oregon Health Licensing Agency.

33 (4) The State Board of Architect Examiners.

34 (5) The State Landscape Contractors Board.

35 (6) The State Board of Examiners for Engineering and Land Surveying.

36 (7) The State Landscape Architect Board.

37 (8) The State Board of Geologist Examiners.

38 (9) The State Board of Tax Practitioners.

39 (10) The Oregon Board of Accountancy.

40 [(11) *The Construction Contractors Board.*]

41 **SECTION 39.** ORS 670.306 is amended to read:

42 670.306. (1) Subsections (2) and (3) of this section shall apply only to the following professional
 43 licensing boards:

44 (a) State Board of Architect Examiners.

45 [(b) *Construction Contractors Board.*]

1 [(c)] (b) State Board of Examiners for Engineering and Land Surveying.

2 [(d)] (c) State Landscape Architect Board.

3 [(e)] (d) State Landscape Contractors Board.

4 [(f)] (e) Oregon Board of Accountancy.

5 [(g)] (f) State Board of Tax Practitioners.

6 (2) A board shall fix the qualifications of and appoint an administrative officer. The determi-
7 nation of qualifications and appointment of an administrative officer shall be made after consultation
8 with the Governor.

9 (3) An administrative officer of a board shall not be a member of that board.

10 (4) Subject to the applicable rules of the State Personnel Relations Law, the board shall fix the
11 compensation of its administrator, who shall be in the unclassified service.

12 (5) Subject to applicable rules of the State Personnel Relations Law, the administrative officer
13 shall appoint all subordinate employees, prescribe their duties and fix their compensation.

14 **SECTION 40.** ORS 671.540 is amended to read:

15 671.540. ORS 671.510 to 671.760 and 671.990 (2) do not apply to:

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

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

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

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

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

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

27 (4) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by
28 a person or business licensed [*with the Construction Contractors Board*] **under ORS chapter 701.**

29 (5) Rough grading of plots and areas of land performed in conjunction with new or remodeling
30 construction if performed by a person or business licensed [*with the Construction Contractors*
31 *Board*] **under ORS chapter 701.**

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

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

42 (8) A general contractor licensed under ORS chapter 701 who performs landscaping work if the
43 total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work
44 is performed on residential property for which the contractor is under contract for the construction
45 of a new dwelling. The exception provided by this subsection does not apply to the performance of

1 irrigation work by a general contractor. The State Landscape Contractors Board shall revise the
2 amount specified in this subsection every five years, beginning in 2003, based on changes in the
3 Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published
4 by the Bureau of Labor Statistics of the United States Department of Labor.

5 (9) A general contractor licensed under ORS chapter 701 who performs landscaping work on
6 residential property that is directly related to local building code requirements or occupancy ordi-
7 nances including, but not limited to, the placement of street trees. The exception provided by this
8 subsection does not apply to the performance of irrigation work by a general contractor.

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

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

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

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

19 (14) An employee, as defined in ORS 657.015, of a general contractor licensed under ORS chapter
20 701 when performing work that the contractor may perform under subsection (8) or (9) of this sec-
21 tion.

22 (15) An employee of a licensed landscape contracting business when performing work for the
23 business under the direct supervision of a licensed landscape construction professional.

24 (16) An employee of a worker leasing company or temporary service provider, both as defined
25 in ORS 656.850, when performing work for a licensed landscape contracting business under the di-
26 rect supervision of a licensed landscape construction professional.

27 **SECTION 41.** ORS 671.540, as amended by section 50, chapter 836, Oregon Laws 2007, is
28 amended to read:

29 671.540. ORS 671.510 to 671.760 and 671.990 (2) do not apply to:

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

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

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

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

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

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

41 (4) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by
42 a person or business licensed [*with the Construction Contractors Board*] **under ORS chapter 701.**

43 (5) Rough grading of plots and areas of land performed in conjunction with new or remodeling
44 construction if performed by a person or business licensed [*with the Construction Contractors*
45 *Board*] **under ORS chapter 701.**

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

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

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

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

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

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

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

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

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

37 (15) An employee of a licensed landscape contracting business when performing work for the
38 business under the direct supervision of a licensed landscape construction professional.

39 (16) An employee of a worker leasing company or temporary service provider, both as defined
40 in ORS 656.850, when performing work for a licensed landscape contracting business under the di-
41 rect supervision of a licensed landscape construction professional.

42 **SECTION 42.** ORS 701.005 is amended to read:

43 701.005. As used in this chapter:

44 [(1) "Board" means the Construction Contractors Board.]

45 [(2)] (1) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

- 1 (a) Commercial general contractor level 1;
- 2 (b) Commercial specialty contractor level 1;
- 3 (c) Commercial general contractor level 2;
- 4 (d) Commercial specialty contractor level 2; or
- 5 (e) Commercial developer.

6 [(3)] (2) “Commercial developer” means a developer of property that is zoned for or intended for
 7 use compatible with a small commercial or large commercial structure.

8 [(4)] (3) “Construction debt” means an amount owed under:

9 (a) An order or arbitration award issued by the [board] **Department of Consumer and Busi-**
 10 **ness Services** that has become final by operation of law;

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

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

15 [(5)] (4) “Contractor” means any of the following:

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

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

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

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

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

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

36 [(6)] (5) “Developer” means a contractor that owns property or an interest in property and en-
 37 gages in the business of arranging for construction work or performing other activities associated
 38 with the improvement of real property, with the intent to sell the property.

39 [(7)] (6) “General contractor”:

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

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

45 [(8)] (7) “Home inspector” means a person who, for a fee, inspects and provides written reports

1 on the overall physical condition of a residential structure and the appurtenances thereto. “Home
 2 inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or
 3 altered structures for compliance with the state building code.

4 [(9)] (8) “Key employee” means an employee or owner of a contractor who is a corporate officer,
 5 manager, superintendent, foreperson or lead person or any other employee identified by the [board]
 6 **department** by rule.

7 [(10)] (9) “Large commercial structure” means a structure that is not a residential structure or
 8 small commercial structure.

9 [(11)] (10) “Officer” means any of the following persons:

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

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

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

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

14 (e) A trustee.

15 (f) A person defined as an officer under [board] **department** rules. The definition of officer
 16 adopted by [board] **department** rule may include persons not listed in this subsection who may ex-
 17 ercise substantial control over a business.

18 [(12)] (11) “Residential contractor” means a licensed contractor that holds an endorsement as
 19 a:

20 (a) Residential general contractor;

21 (b) Residential specialty contractor;

22 (c) Residential limited contractor; or

23 (d) Residential developer.

24 [(13)] (12) “Residential developer” means a developer of property that is zoned for or intended
 25 for use compatible with a residential or small commercial structure.

26 [(14)] (13) “Residential structure”:

27 (a) Means:

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

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

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

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

34 (E) A manufactured dwelling; or

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

36 (b) Does not mean:

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

39 (B) Transient lodging;

40 (C) A residential school or residence hall;

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

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

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

1 (G) A detention facility as defined in ORS 419A.004;
 2 (H) A nursing home;
 3 (I) A hospital; or
 4 (J) A place constructed primarily for recreational activities.
 5 [(15)] (14) “Responsible managing individual” means an individual who:
 6 (a) Is an owner described in ORS 701.094 or an employee of the business;
 7 (b) Exercises management or supervisory authority, as defined by the [board] **department** by
 8 rule, over the construction activities of the business; and
 9 (c)(A) Has successfully completed the training and testing required for licensing under ORS
 10 701.122 within a period identified by the [board] **department** by rule;
 11 (B) Has demonstrated experience required by the [board] **department** by rule; or
 12 (C) Has complied with the licensing requirements of ORS 446.395.
 13 [(16)] (15) “Small commercial structure” means:
 14 (a) A nonresidential structure that has a ground area of 10,000 square feet or less, including
 15 exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to
 16 the highest interior overhead finish of the structure;
 17 (b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the
 18 unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not
 19 more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish
 20 of the unit; or
 21 (c) A nonresidential structure of any size for which the contract price of all construction con-
 22 tractor work to be performed on the structure as part of a construction project does not total more
 23 than \$250,000.
 24 [(17)] (16) “Specialty contractor” means a [contractor who performs work on a structure, project,
 25 development or improvement and whose operations as such do not fall within the definition of
 26 “general contractor.” “Specialty contractor” includes a person who performs work regulated under
 27 ORS 446.395.
 28 [(18)] (17) “Zero-lot-line dwelling” means a single-family dwelling unit constructed in a group of
 29 attached units in which:
 30 (a) Each attached unit extends from foundation to roof with open space on two sides; and
 31 (b) Each dwelling unit is separated by a property line.
 32 **SECTION 43.** ORS 701.010 is amended to read:
 33 701.010. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
 34 **vices** may adopt rules to make licensure **under this chapter** optional for persons who offer, bid or
 35 undertake to perform work peripheral to construction, as defined by administrative rule of the
 36 [board] **department**. The following persons are exempt from licensure under this chapter:
 37 (1) A person who is constructing, altering, improving or repairing personal property.
 38 (2) A person who is constructing, altering, improving or repairing a structure located within the
 39 boundaries of any site or reservation under the jurisdiction of the federal government.
 40 (3) A person who furnishes materials, supplies, equipment or finished product and does not fab-
 41 ricate them into, or consume them, in the performance of the work of a contractor.
 42 (4) A person working on one structure or project, under one or more contracts, when the ag-
 43 gregate price of all of that person’s contracts for labor, materials and all other items is less than
 44 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
 45 to a person who advertises or puts out any sign or card or other device that might indicate to the

1 public that the person is a contractor.

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

9 (6) An owner who contracts for one or more licensed contractors to perform work wholly or
10 partially within the same calendar year on not more than three existing residential structures of the
11 owner. This subsection does not apply to an owner contracting for work that requires a building
12 permit unless the work that requires a permit is performed by, or under the direction of, a residen-
13 tial general contractor.

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

20 (8) A person licensed in one of the following trades or professions when operating within the
21 scope of that license:

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

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

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

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

27 (e) A landscape contracting business licensed under ORS 671.510 to 671.760 that constructs
28 fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and that
29 meets the applicable bonding requirements under ORS 671.690.

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

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

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

35 (10) A manufacturer of a manufactured home constructed under standards established by the
36 federal government.

37 (11) A person involved in the movement of:

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

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

42 (12) A commercial lending institution or surety company that arranges for the completion, repair
43 or remodeling of a structure. As used in this subsection, "commercial lending institution" means
44 any bank, mortgage banking company, trust company, savings bank, savings and loan association,
45 credit union, national banking association, federal savings and loan association, insurance company

1 or federal credit union maintaining an office in this state.

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

4 (14) Units of government other than those specified in ORS 701.005 [(5)(c)] (4)(c) and (d).

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

8 (16) A business that supplies personnel to a licensed contractor for the performance of work
9 under the direction and supervision of the contractor.

10 (17) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.

11 **SECTION 44.** ORS 701.013 is amended to read:

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

27 **SECTION 45.** ORS 701.021 is amended to read:

28 701.021. (1) Except as provided in ORS 701.010, a person or joint venture that undertakes, offers
29 to undertake or submits a bid to do work as a contractor must have a current license issued by the
30 [*Construction Contractors Board*] **Department of Consumer and Business Services under this**
31 **chapter** and possess an appropriate endorsement as provided in this section.

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

- 35 (a) Residential general contractor.
- 36 (b) Residential specialty contractor.
- 37 (c) Residential limited contractor.
- 38 (d) Residential developer.

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

- 42 (a) Residential general contractor.
- 43 (b) Residential specialty contractor.
- 44 (c) Residential limited contractor.
- 45 (d) Residential developer.

- 1 (e) Commercial general contractor level 1.
- 2 (f) Commercial specialty contractor level 1.
- 3 (g) Commercial general contractor level 2.
- 4 (h) Commercial specialty contractor level 2.
- 5 (i) Commercial developer.

6 (4) A person or joint venture that undertakes, offers to undertake or submits a bid to do work
7 as a contractor in preparation for or in connection with a large commercial structure must have
8 one of the following endorsements:

- 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.
- 13 (e) Commercial developer.

14 **SECTION 46.** ORS 701.026 is amended to read:

15 701.026. (1) A person or joint venture may not undertake, offer to undertake or submit a bid to
16 do work as a contractor unless that person or joint venture has a current, valid license issued under
17 this chapter [*by the Construction Contractors Board*]. A partnership or joint venture is licensed for
18 the purpose of offering to undertake work as a contractor on a structure if any of the partners or
19 joint venturers whose name appears in the business name of the partnership or joint venture is li-
20 censed under this chapter.

21 (2) A contractor may not hire any subcontractor or other contractor to perform work unless the
22 subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS
23 701.010.

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

26 **SECTION 47.** ORS 701.031 is amended to read:

27 701.031. (1) It is prima facie evidence that a person is doing business as a contractor if:

28 (a) The person for that person's own use performs, employs others to perform, or for compen-
29 sation and with the intent to sell the structure arranges to have performed, work described in ORS
30 701.005 [(5)] (4); and

31 (b) Within any 36-month period the person offers for sale two or more newly built structures on
32 which work described in paragraph (a) of this subsection was performed.

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

35 **SECTION 48.** ORS 701.035 is amended to read:

36 701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
37 eligible for a license **under this chapter** [*with the Construction Contractors Board*].

38 (2) The [*board*] **Department of Consumer and Business Services** shall establish two classes
39 of independent contractor licenses:

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

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

43 (B) Partnerships, corporations and limited liability companies with more than two partners,
44 corporate officers or members, if any of the partners, corporate officers or members are not part of
45 the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-

1 law or sons-in-law or grandchildren.

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

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

9 (4) The decision of the [board] **department** that a person is an independent contractor applies
10 only when the person is performing work of the nature described in ORS 701.026 and 701.060.

11 **SECTION 49.** ORS 701.035, as amended by section 15, chapter 836, Oregon Laws 2007, is
12 amended to read:

13 701.035. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be
14 eligible for a license [*with the Construction Contractors Board*] **under this chapter**.

15 (2) The [board] **Department of Consumer and Business Services** shall establish two classes
16 of independent contractor:

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

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

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

24 (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
25 limited liability companies that do not qualify as nonexempt.

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

30 (4) The decision of the [board] **department** that a person is an independent contractor applies
31 only when the person is performing work of the nature described in ORS 701.021.

32 (5) A person that is within the exempt class described in subsection (2)(b) of this section and is
33 licensed as a commercial contractor shall procure and maintain workers' compensation insurance
34 as authorized by ORS 656.128.

35 **SECTION 50.** ORS 701.046 is amended to read:

36 701.046. (1) An applicant for a construction contractor license must submit the application on
37 a form prescribed by the [*Construction Contractors Board*] **Department of Consumer and Business**
38 **Services**. The application shall include, but not be limited to, the following information:

39 (a) The endorsement being sought.

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

43 (c) For each person described in paragraphs (h) and (i) of this subsection, a Social Security
44 number.

45 (d) Workers' compensation insurance account number, if the applicant is required to have

1 workers' compensation insurance.

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

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

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

8 (h) The name and address of:

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

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

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

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

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

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

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

18 (H) The responsible managing individual designated by the applicant.

19 (I) Each trustee, if the applicant is a trust.

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

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

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

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

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

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

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

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

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

38 (j) For each person described in paragraphs (h) and (i) of this subsection, information as required
39 by [board] **department** rule regarding the following if related to construction activities:

40 (A) A final judgment against the person by a court in any state entered within five years pre-
41 ceding the application date that requires the person to pay money to another person or to a public
42 body if the judgment remains unsatisfied on the application date.

43 (B) A final order against the person by an administrative agency in any state issued within five
44 years preceding the application date that requires the person to pay money to another person or to
45 a public body if the order remains unsatisfied on the application date.

1 (C) A court action against the person in any state pending on the application date that alleges
 2 the person owes money to another person or to a public body.

3 (D) An action by an administrative agency in any state pending on the application date that
 4 seeks an order that the person pay money to another person or to a public body.

5 (E) A conviction for a crime listed in ORS 701.098 (1)(i) entered within five years preceding the
 6 application date.

7 (F) An indictment for a crime listed in ORS 701.098 (1)(i) filed within five years preceding the
 8 application date.

9 (k) The basis on which the applicant meets the standards for independent contractor status un-
 10 der ORS 670.600.

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

13 (a) Is in compliance with ORS 701.091.

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

15 (3) Subsection (2)(a) of this section does not apply to an applicant for licensing with endorsement
 16 solely as a residential or commercial developer.

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

19 **SECTION 51.** ORS 701.056 is amended to read:

20 701.056. Each applicant shall pay to the [*Construction Contractors Board*] **Department of Con-**
 21 **sumer and Business Services**:

22 (1) For an application for the issuance or renewal of a contractor license, an application fee as
 23 determined by the [board] **department** under ORS 701.238.

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

26 **SECTION 52.** ORS 701.060 is amended to read:

27 701.060. Any contractor licensed under this chapter may at any time apply for an additional or
 28 different endorsement. The [*Construction Contractors Board*] **Department of Consumer and Busi-**
 29 **ness Services** may charge a fee not to exceed \$20 for each application.

30 **SECTION 53.** ORS 701.063 is amended to read:

31 701.063. (1) A license **issued under this chapter** is valid for two years from the date of issuance
 32 unless the license is revoked or suspended as set forth in ORS 701.098.

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

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

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

44 (5) A contractor may convert a license to inactive status if the contractor is not engaged in
 45 work as a contractor. A contractor having an inactive license is subject to [board] **department** li-

1 censing requirements and application fees, but is not subject to the bonding requirement of ORS
2 701.068 or the insurance requirement of ORS 701.073. An inactive license is not considered a valid
3 license for purposes of offering to undertake construction work, submitting a bid for construction
4 work, obtaining a building permit or performing construction work. A license may not be placed or
5 maintained in inactive status more than once during any two-year licensing term.

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

8 **SECTION 54.** ORS 701.063, as amended by section 25, chapter 836, Oregon Laws 2007, is
9 amended to read:

10 701.063. (1) A license **issued under this chapter** is valid for two years from the date of issuance
11 unless the license is revoked or suspended as set forth in ORS 701.098.

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

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

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

23 (5) A contractor may convert a license to inactive status if the contractor is not engaged in
24 work as a contractor. A contractor having an inactive license is subject to *[board]* **department** li-
25 censing requirements and application fees, but is not subject to the bonding requirement of ORS
26 701.068 or the insurance requirement of ORS 701.073. A commercial general or commercial specialty
27 contractor having an inactive license is not subject to the key employee continuing education re-
28 quirements of ORS 701.124. An inactive license is not considered a valid license for purposes of
29 offering to undertake construction work, submitting a bid for construction work, obtaining a build-
30 ing permit or performing construction work. A license may not be placed or maintained in inactive
31 status more than once during any two-year licensing term.

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

34 **SECTION 55.** ORS 701.068 is amended to read:

35 701.068. (1) An applicant for issuance or renewal of a contractor license shall file with the
36 *[Construction Contractors Board]* **Department of Consumer and Business Services** a surety bond
37 with one or more corporate sureties authorized to do business in this state in the amount set forth
38 in ORS 701.081 or 701.084.

39 (2) If an applicant for issuance, renewal or an additional endorsement of a **contractor** license
40 will hold endorsements as both a residential contractor and a commercial contractor, the applicant
41 shall file with the *[board]* **department** a surety bond for each endorsement in the amount set forth
42 in ORS 701.081 or 701.084.

43 (3) The surety bond must provide that the applicant, with regard to work subject to this chapter,
44 will pay amounts ordered paid by the *[board]* **department** under ORS 701.145 or 701.146. Bonds filed
45 under this section shall remain in effect for at least one year or until depleted by payments under

1 ORS 701.150, 701.153 and 701.157, unless the surety sooner cancels the bond. At the discretion of the
 2 surety the bond may be continued for an additional period by continuation certificate. Except as
 3 provided in subsection (4) of this section, the aggregate liability of the surety under the bond for
 4 complaints against the contractor may not exceed the penal sum of the bond no matter how many
 5 years the bond is in force. Except as provided in subsection (4) of this section, an extension by
 6 continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability
 7 of the surety.

8 (4) The [board] **department**, by rule, may require a licensee to obtain a new surety bond if,
 9 pursuant to a [board] **department** order for payment of a complaint described in ORS 701.140, the
 10 surety pays an amount out of the bond of the licensee. The new surety bond must be in the appli-
 11 cable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a [board]
 12 **department** condition or rule described in subsection (5) or (6) of this section. The [board] **de-**
 13 **partment** may allow a licensee to obtain, instead of a new bond, a certification that the surety re-
 14 mains liable for the full penal sum of the bond, notwithstanding payment by the surety on the
 15 complaint.

16 (5) If the amount the licensee must pay against the bond under subsection (3) of this section
 17 exceeds the amount of the bond, the [board] **department** shall suspend the contractor's license until
 18 the amount owed is paid. The [board] **department**, as a condition of ending the suspension, may
 19 require a contractor requesting reinstatement of a license to file a bond of an amount up to five
 20 times as much as the amount required ordinarily of a licensee under ORS 701.081 or 701.084.

21 (6) The [board] **department** by rule may establish conditions for applicants or persons licensed
 22 under this chapter under which the applicant or licensee must file a bond of an amount up to five
 23 times as much as the amount required ordinarily of an applicant or licensee under ORS 701.081 or
 24 701.084. The [board] **department** may reduce the amount of bond it would otherwise require if the
 25 contractor demonstrates satisfactory completion of approved elective classes on dispute resolution
 26 and prevention, basic accounting and record keeping or such other classes as the [board] **depart-**
 27 **ment** may prescribe.

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

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

34 (9) A court action may not be commenced against a surety on a bond required under this section
 35 until 30 days after the date that the surety is notified by the [board] **department** under ORS 701.150
 36 that payment is due on the final order.

37 (10) In any action against a surety on a bond under this section that is based on the failure of
 38 the surety to pay a final order, the court may award:

39 (a) Costs;

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

41 (c) Twice the amount of any damages that the [board] **department** ordered the surety to pay
 42 on the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the
 43 [board] **department**.

44 **SECTION 56.** ORS 701.073 is amended to read:

45 701.073. (1) A contractor who possesses a license as required under this chapter shall have in

1 effect public liability, personal injury and property damage insurance covering the work of the
 2 contractor that is subject to this chapter, including the covering of liability for products and com-
 3 pleted operations according to the terms of the policy and subject to applicable policy exclusions,
 4 for an amount not less than the applicable amount set forth in ORS 701.081 or 701.084.

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

8 **SECTION 57.** ORS 701.088 is amended to read:

9 701.088. (1) As used in this section:

10 (a) “Illegal drug manufacturing site” has the meaning given that term in ORS 453.858.

11 (b) “Nonprofit organization” means an organization or group of organizations described in sec-
 12 tion 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of
 13 the Internal Revenue Code.

14 (2) The [*Construction Contractors Board*] **Department of Consumer and Business Services**
 15 shall adopt rules prescribing terms and conditions under which a general or specialty contractor
 16 that is a nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may
 17 substitute a letter of credit from a bank authorized to do business in this state, or substitute a cash
 18 deposit, for a bond required under ORS 701.068. A letter of credit or cash deposit described in this
 19 section substitutes for a bond only for purposes of work the contractor performs on an illegal drug
 20 manufacturing site. The letter of credit or cash deposit must be equivalent in amount to the bond
 21 that would otherwise be required of the contractor under ORS 701.068.

22 (3) The [*board*] **department** may charge a contractor a fee to cover any expense incurred by
 23 the [*board*] **department** in allowing the contractor to substitute a letter of credit or cash deposit
 24 under this section.

25 (4) A contractor that supplies a letter of credit or cash deposit under this section is considered
 26 to be bonded under ORS 701.068 for purposes of performing rehabilitation work on illegal drug
 27 manufacturing sites. A letter of credit or cash deposit that a contractor supplies under this section
 28 is considered to be a surety bond issued under ORS 701.068 for purposes of claims involving the
 29 contractor’s rehabilitation work on illegal drug manufacturing sites. The issuer of a letter of credit
 30 described in this section is considered to be a surety for a bond only for purposes of receiving notice
 31 under ORS 701.068 or 701.146.

32 **SECTION 58.** ORS 701.094 is amended to read:

33 701.094. (1) As used in ORS 701.098 and 701.102, “owner” means:

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

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

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

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

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

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

44 **SECTION 59.** ORS 701.098 is amended to read:

45 701.098. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**

1 **Services** may revoke, suspend or refuse to issue or reissue a license and *[the board]* may assess a
 2 civil penalty as provided in ORS 701.992 if the *[board]* **department** determines after notice and op-
 3 portunity for hearing:

4 (a) That the licensee or applicant has violated a provision of ORS 701.026, 701.091, 701.114,
 5 701.305, 701.320, 701.325 (1), 701.335 or 701.345 or a rule adopted under ORS 701.330 (4).

6 (b) That the licensee has violated a rule or order of the *[board]* **department**.

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

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

12 (e) That the licensee has knowingly provided false information to the *[board]* **department re-**
 13 **garding a matter or person subject to regulation under this chapter.**

14 (f) That the licensee has worked without a construction permit where a permit is required and
 15 the work resulted in a complaint being filed with the *[board]* **department** under ORS 701.139. For
 16 purposes of this paragraph, “construction permit” includes a building permit, electrical permit, me-
 17 chanical permit or plumbing permit.

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

- 21 (A) Two sole proprietors;
- 22 (B) One partnership;
- 23 (C) One corporation; or
- 24 (D) One limited liability company.

25 (h) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner
 26 or officer of the licensee or applicant has been convicted of one of the following crimes in this state
 27 or an equivalent crime in another state:

- 28 (A) Murder;
- 29 (B) Assault in the first degree;
- 30 (C) Kidnapping;
- 31 (D) Rape, sodomy or unlawful sexual penetration;
- 32 (E) Sexual abuse;
- 33 (F) Arson in the first degree;
- 34 (G) Robbery in the first degree;
- 35 (H) Theft in the first degree; or
- 36 (I) Theft by extortion.

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

41 (j) That the licensee or applicant has repeatedly reported bad faith or false complaints of non-
 42 payment against contractors or subcontractors.

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

45 (2) The *[board]* **department** may revoke, suspend or refuse to issue or reissue a license if the

1 [board] **department** determines after notice and opportunity for hearing that an applicant or
2 licensee is unfit for licensure based upon information submitted under ORS 701.046 or discovered
3 by a [board] **department** investigation under ORS 701.225.

4 (3) The [board] **department** may assess a civil penalty as provided in ORS 701.992 if the
5 [board] **department** determines after notice and opportunity for hearing that any person has vio-
6 lated ORS 701.026 (1).

7 (4)(a) The [administrator of the board] **department**, in accordance with administrative rules
8 adopted by the [board] **department** and after setting forth specific reasons for the findings, may
9 suspend or refuse to renew a license without hearing in any case where the [administrator] **de-**
10 **partment** finds a serious danger to the public welfare, including but not limited to:

11 (A) Lack of a surety bond required by ORS 701.068;

12 (B) Lack of liability insurance required by ORS 701.073;

13 (C) Hiring employees while licensed as exempt under ORS 701.035;

14 (D) Conduct as a construction contractor that is dishonest or fraudulent; or

15 (E) Failure to pay a construction debt.

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

25 (5)(a) In addition to all other remedies, if the [board] **department** has reason to believe that a
26 person is engaging in an act, practice or transaction that violates this chapter or a [board] **de-**
27 **partment** rule, the [board] **department** may issue an order directing the person to cease the act
28 or to take corrective action.

29 (b) The [board] **department** shall mail a copy of an order issued under this subsection to the
30 person by first class mail with certificate of mailing. The [board] **department** shall include with the
31 order a notice informing the person of the right to request a hearing concerning the order. The
32 notice shall inform the person that any hearing request must be received by the [board] **department**
33 no later than 21 days after the date the order was mailed by the [board] **department**.

34 (c) If the [board] **department** receives a timely request for a hearing concerning an order issued
35 under this subsection, the [board] **department** shall schedule the hearing no later than 30 days after
36 receiving the request. The [board] **department** shall mail written notice of the hearing to the person
37 by first class mail with certificate of mailing no later than seven days before the scheduled hearing
38 date.

39 (d) An order described in this subsection becomes final if the person does not file a timely re-
40 quest for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

41 (e) The issuance of a [board] **department** order under this subsection is subject to ORS 183.413
42 to 183.497.

43 (6) In addition to all other remedies, if it appears to the [board] **department** that a person has
44 engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this
45 chapter, the [board] **department** may direct the Attorney General or the district attorney of the

1 county in which the act, practice or transaction occurs, to apply to the court for an injunction re-
 2 straining the person from violating the provisions of this chapter. An injunction may not issue for
 3 failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure
 4 is intentional.

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

7 (8) If the [board] **department** suspends or revokes the license of an individual contractor or
 8 contractor business for a violation of subsection (1)(g) of this section, the [board] **department** may
 9 not restore or reissue the license unless the individual contractor or a responsible managing indi-
 10 vidual for the contractor business has successfully completed the training and testing described in
 11 ORS 701.122.

12 **SECTION 60.** ORS 701.098, as amended by section 63, chapter 836, Oregon Laws 2007, is
 13 amended to read:

14 701.098. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**
 15 **Services** may revoke, suspend or refuse to issue or reissue a license and [*the board*] may assess a
 16 civil penalty as provided in ORS 701.992 if the [board] **department** determines after notice and op-
 17 portunity for hearing:

18 (a) That the licensee or applicant has violated a provision of this chapter.

19 (b) That the licensee has violated a rule or order of the [board] **department**.

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

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

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

27 (f) That the licensee has knowingly provided false information to the [board] **department re-**
 28 **garding a matter or person subject to regulation under this chapter.**

29 (g) That the licensee has worked without a construction permit where a permit is required and
 30 the work resulted in a complaint being filed with the [board] **department** under ORS 701.139. For
 31 purposes of this paragraph, "construction permit" includes a building permit, electrical permit, me-
 32 chanical permit or plumbing permit.

33 (h) That the number of licensed contractors working together on the same task on the same job
 34 site, where one of the contractors is classed as exempt under ORS 701.035 (2)(b), exceeded the fol-
 35 lowing:

36 (A) Two sole proprietors;

37 (B) One partnership;

38 (C) One corporation; or

39 (D) One limited liability company.

40 (i) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner
 41 or officer of the licensee or applicant has been convicted of one of the following crimes in this state
 42 or an equivalent crime in another state:

43 (A) Murder;

44 (B) Assault in the first degree;

45 (C) Kidnapping;

- 1 (D) Rape, sodomy or unlawful sexual penetration;
- 2 (E) Sexual abuse;
- 3 (F) Arson in the first degree;
- 4 (G) Robbery in the first degree;
- 5 (H) Theft in the first degree; or
- 6 (I) Theft by extortion.

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

11 (k) That the licensee or applicant has repeatedly reported bad faith or false complaints of non-
 12 payment against contractors or subcontractors.

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

15 (2) The *[board]* **department** may revoke, suspend or refuse to issue or reissue a license if the
 16 *[board]* **department** determines after notice and opportunity for hearing that an applicant or
 17 licensee is unfit for licensure based upon information submitted under ORS 701.046 or discovered
 18 by a *[board]* **department** investigation under ORS 701.225.

19 (3) The *[board]* **department** may assess a civil penalty as provided in ORS 701.992 if the
 20 *[board]* **department** determines after notice and opportunity for hearing that any person has vio-
 21 lated ORS 701.021.

22 (4)(a) The *[administrator of the board]* **department**, in accordance with administrative rules
 23 adopted by the *[board]* **department** and after setting forth specific reasons for the findings, may
 24 suspend or refuse to renew a license without hearing in any case where the *[administrator]* **de-**
 25 **partment** finds a serious danger to the public welfare, including but not limited to:

- 26 (A) Lack of a surety bond required by ORS 701.068;
- 27 (B) Lack of liability insurance required by ORS 701.073;
- 28 (C) Hiring employees while classed as exempt under ORS 701.035;
- 29 (D) Conduct as a construction contractor that is dishonest or fraudulent; or
- 30 (E) Failure to pay a construction debt.

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

40 (5)(a) In addition to all other remedies, if the *[board]* **department** has reason to believe that a
 41 person is engaging in an act, practice or transaction that violates this chapter or a *[board]* **de-**
 42 **partment** rule, the *[board]* **department** may issue an order directing the person to cease the act
 43 or to take corrective action.

44 (b) The *[board]* **department** shall mail a copy of an order issued under this subsection to the
 45 person by first class mail with certificate of mailing. The *[board]* **department** shall include with the

1 order a notice informing the person of the right to request a hearing concerning the order. The
 2 notice shall inform the person that any hearing request must be received by the [board] **department**
 3 no later than 21 days after the date the order was mailed by the [board] **department**.

4 (c) If the [board] **department** receives a timely request for a hearing concerning an order issued
 5 under this subsection, the [board] **department** shall schedule the hearing no later than 30 days after
 6 receiving the request. The [board] **department** shall mail written notice of the hearing to the person
 7 by first class mail with certificate of mailing no later than seven days before the scheduled hearing
 8 date.

9 (d) An order described in this subsection becomes final if the person does not file a timely re-
 10 quest for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

11 (e) The issuance of a [board] **department** order under this subsection is subject to ORS 183.413
 12 to 183.497.

13 (6) In addition to all other remedies, if it appears to the [board] **department** that a person has
 14 engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this
 15 chapter, the [board] **department** may direct the Attorney General or the district attorney of the
 16 county in which the act, practice or transaction occurs, to apply to the court for an injunction re-
 17 straining the person from violating the provisions of this chapter. An injunction may not issue for
 18 failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure
 19 is intentional.

20 (7) A certified copy of the record of conviction shall be conclusive evidence of a conviction un-
 21 der subsection (1)(i) of this section.

22 (8) If the [board] **department** suspends or revokes the license of an individual contractor or
 23 contractor business for a violation of subsection (1)(h) of this section, the [board] **department** may
 24 not restore or reissue the license unless the individual contractor or a responsible managing indi-
 25 vidual for the contractor business has successfully completed the training and testing described in
 26 ORS 701.122.

27 **SECTION 61.** ORS 701.102 is amended to read:

28 701.102. (1) As used in this section, “construction contractor license” means a license issued
 29 within the United States to engage in the business of construction contracting.

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

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

34 (b) An owner, officer or responsible managing individual of the business owes a construction
 35 debt or has had a construction contractor license revoked or suspended;

36 (c) An owner, officer or responsible managing individual of the business was an owner, officer
 37 or responsible managing individual of another business at the time the other business incurred a
 38 construction debt that is owing or at the time of an event that resulted in the revocation or sus-
 39 pension of the other business’s construction contractor license; or

40 (d) The [board] **department** determines that an owner, officer or responsible managing individ-
 41 ual of the business is not fit for licensure, based upon information submitted under ORS 701.046 or
 42 discovered by a [board] **department** investigation under ORS 701.225.

43 (3) The [board] **department** may place a contractor on probation if a total of three or more
 44 complaints are filed with the [board] **department** under ORS 701.139 within a 12-month period
 45 against the contractor or a former licensed construction contracting business in which the con-

1 tractor held at least a 10 percent ownership interest, measured as determined by [board] **depart-**
 2 **ment** rule. A contractor may not be placed on probation unless the [board] **department** determines
 3 after investigation that it is likely that the contractor has caused harm to the complainants. The
 4 [board] **department** may require a contractor that is placed on probation to develop a corrective
 5 action plan, to attend specific classes and to resolve outstanding complaints. The [board] **depart-**
 6 **ment** may require a contractor that is placed on probation to take training and pass a test, both
 7 as described in ORS 701.122. The [board] **department** shall take action to terminate the contractor's
 8 license if the contractor is unwilling or unable to comply with the conditions of probation.

9 **SECTION 62.** ORS 701.109 is amended to read:

10 701.109. (1) As used in this section, "judgment" means:

- 11 (a) A judgment issued in a court action; or
- 12 (b) A court order that confirms an arbitration award.

13 (2) A contractor shall send the [*Construction Contractors Board*] **Department of Consumer and**
 14 **Business Services** a copy of a final judgment entered by a circuit court of this state, or by an
 15 equivalent court in another state, if the judgment orders the contractor to pay damages that arise
 16 from a breach of contract or from negligent or improper work and that relate to the construction
 17 or proposed construction of a residential structure. The contractor shall cause the copy of the final
 18 judgment to be delivered to the [board] **department** no later than 45 days after the final judgment
 19 is recorded.

20 (3) Notwithstanding subsection (2) of this section, a contractor is not required to send the
 21 [board] **department** a copy of a final judgment if:

- 22 (a) The contractor paid the damages and other amounts payable by the contractor under the
 23 judgment no later than 30 days after recording of the judgment; or
- 24 (b) The contractor is appealing the judgment and has filed any undertaking on appeal required
 25 by ORS 19.300.

26 (4) In determining whether to impose a disciplinary sanction under this chapter, the [board]
 27 **department** shall give due consideration to any past or current attempts by the contractor to make
 28 payments toward satisfaction of a judgment.

29 **SECTION 63.** ORS 701.112 is amended to read:

30 701.112. A lapse, surrender, suspension or other change in license status does not affect any
 31 authority otherwise granted the [*Construction Contractors Board*] **Department of Consumer and**
 32 **Business Services** to proceed with an investigation, conduct a disciplinary hearing or take disci-
 33 plinary action against a person for a violation of this chapter or rules of the [board] **department**,
 34 or to determine a timely complaint described in ORS 701.140.

35 **SECTION 64.** ORS 701.114 is amended to read:

36 701.114. A contractor licensed under this chapter shall immediately notify the [*Construction*
 37 *Contractors Board*] **Department of Consumer and Business Services** of any change in the iden-
 38 tity, name or address of a person who holds a position with the contractor that is described in ORS
 39 701.046 (1)(h) or (i) or of a responsible managing individual for the contractor as defined in ORS
 40 701.091. If a partner or joint venturer departs from a contractor that is a partnership or joint ven-
 41 ture, the contractor must obtain a new license before continuing to conduct activities that require
 42 a license under this chapter.

43 **SECTION 65.** ORS 701.117 is amended to read:

44 701.117. A contractor shall notify the [*Construction Contractors Board*] **Department of Con-**
 45 **sumer and Business Services** of any change of address while licensed and for one year following

1 the date the contractor's license expires or otherwise becomes inactive. The contractor shall so
 2 notify the [board] **department** within 10 days of the date upon which the change of address occurs.
 3 Initial notice of a contested case or arbitration directed by the [board] **department** to the last-
 4 known address of record shall be considered delivered when deposited in the United States mail and
 5 sent registered or certified or post office receipt secured. Any other communication directed by the
 6 [board] **department** to the last-known address of record shall be considered delivered when depos-
 7 ited in the United States mail, regular mail.

8 **SECTION 66.** ORS 701.120 is amended to read:

9 701.120. (1) As used in this section, a "specialized education program" means one or more of the
 10 following:

11 (a) A structured program that is approved or certified by an appropriate state or federal agency,
 12 or by an organization recognized by the [*Construction Contractors Board*] **Department of Consumer**
 13 **and Business Services** as representing construction contractors, and is designed to educate con-
 14 tractors to deal with one or more specific consumer health or safety issues.

15 (b) A [*board-approved*] program, **approved by the department under this chapter**, from an
 16 accredited college or university that grants a two-year or four-year degree upon successful com-
 17 pletion of the program.

18 (c) An apprenticeship program that is approved by the [board] **department under this**
 19 **chapter**.

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

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

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

36 **SECTION 67.** ORS 701.122 is amended to read:

37 701.122. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**
 38 **Services**, by rule, shall impose training requirements for individuals and businesses seeking to be
 39 licensed under this chapter. The training required by the [board] **department** must relate to busi-
 40 ness practices and laws affecting construction contractors. The [board] **department** shall adopt
 41 standards for programs that provide training that meets the requirements of this subsection.

42 (2) In establishing training requirements under subsection (1) of this section, the [board] **de-**
 43 **partment** shall take into consideration the availability of training programs within the state and
 44 shall encourage training providers to use the most up-to-date technology. The [board] **department**
 45 shall recognize and grant credit for training provided by private organizations if the training pro-

1 gram meets the standards established by the [board] **department** under subsection (1) of this sec-
 2 tion. The [board] **department** periodically shall review the qualifications of private organizations
 3 and instructors to determine compliance with the program standards. The [board] **department** shall
 4 develop and make available to the public a list of public and private programs that provide training
 5 that meets the training requirements established by the [board] **department** under subsection (1)
 6 of this section.

7 (3) The [board] **department**, by rule, shall approve a test for applicants for licensing under ORS
 8 701.046. The test shall measure the applicant’s knowledge regarding business practices and laws that
 9 are the subject of the training required under subsection (1) of this section.

10 (4) Subsections (1) and (3) of this section do not apply to an applicant for licensing with
 11 endorsement solely as a residential or commercial developer.

12 **SECTION 68.** ORS 701.124 is amended to read:

13 701.124. (1) A commercial general contractor level 1 or commercial specialty contractor level 1
 14 shall have a key employee, or combination of key employees, who completes at least 40 hours of
 15 continuing education per year.

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

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

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

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

29 (6) A contractor subject to this section shall maintain records of the continuing education
 30 completed by key employees.

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

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

34 (b) As provided by rule by the [*Construction Contractors Board*] **Department of Consumer and**
 35 **Business Services.**

36 **SECTION 69.** ORS 701.126 is amended to read:

37 701.126. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**
 38 **Services** shall adopt rules establishing a continuing education system for all persons licensed by the
 39 [board] **department**. The rules adopted by the [board] **department** shall include, but need not be
 40 limited to, rules establishing the required number of hours and course content for continuing edu-
 41 cation. The [board] **department** may establish reasonable fees for courses and instruction provided
 42 by the [board] **department**, or for approving the course content and instruction for continuing ed-
 43 ucation provided by other sources.

44 (2) The continuing education required for a contractor may include training in construction
 45 means and methods, compliance with the state building code and business practices.

1 (3) A person may not renew a license issued by the [board] **department** unless the person cer-
 2 tifies to the [board] **department** at the time of license renewal that the licensee has completed the
 3 amount and type of continuing education required by the [board] **department**.

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

5 **SECTION 70.** ORS 701.128 is amended to read:

6 701.128. If any person suffered costs or damages as a result of an individual providing a false
 7 or invalid [*Construction Contractors Board*] **Department of Consumer and Business Services**
 8 number or otherwise misleading a person with respect to licensure with the [board] **department**,
 9 that person may bring suit in a court of competent jurisdiction to recover damages. The court may
 10 award reasonable attorney fees to the prevailing party in an action under this section.

11 **SECTION 71.** ORS 701.131 is amended to read:

12 701.131. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a
 13 construction lien, file a complaint with the [*Construction Contractors Board*] **Department of Con-**
 14 **sumer and Business Services** or commence an arbitration or a court action for compensation for
 15 the performance of any work or for the breach of any contract for work that is subject to this
 16 chapter, unless the contractor had a valid license issued by the [board] **department**:

17 (a) At the time the contractor bid or entered into the contract for performance of the work; and

18 (b) Continuously while performing the work for which compensation is sought.

19 (2) The [board] **department**, arbitrator or court may not apply the provisions of subsection (1)
 20 of this section to a contractor if the [board] **department**, arbitrator or court determines that:

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

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

27 (B) At the time the contractor perfected a construction lien or commenced any proceeding sub-
 28 ject to the provisions of subsection (1) of this section, the contractor was licensed by the [board]
 29 **department**; and

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

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

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

37 (B) Except for perfection of a construction lien and a court action to foreclose the lien, at the
 38 time the contractor commenced any proceeding subject to the provisions of subsection (1) of this
 39 section the contractor's license was renewed under ORS 701.063 to include the entire time period
 40 for which a license was required under subsection (1) of this section; and

41 (C) For perfection of a construction lien and a court action to foreclose the lien, the contractor's
 42 license was renewed under ORS 701.063 for the entire time period for which a license was required
 43 under subsection (1) of this section, but not later than 90 days following perfection of the lien;

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

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

4 (C) The licensed developer was licensed at the time the licensed developer perfected the lien
 5 or commenced the proceeding; and

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

8 (d) The proceeding:

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

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

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

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

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

16 (3) If a contractor falsely swears to information provided under ORS 701.046 or knowingly vio-
 17 lates the provisions of ORS 656.029, 670.600 or 701.046, the contractor may not perfect a con-
 18 struction lien, file a complaint with the [board] **department** or commence an arbitration or a court
 19 action for compensation for the performance of any work on a residential structure or for the breach
 20 of any contract for work on a residential structure that is subject to this chapter.

21 **SECTION 72.** ORS 701.131, as amended by section 58, chapter 836, Oregon Laws 2007, is
 22 amended to read:

23 701.131. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a
 24 construction lien, file a complaint with the [*Construction Contractors Board*] **Department of Con-**
 25 **sumer and Business Services** or commence an arbitration or a court action for compensation for
 26 the performance of any work or for the breach of any contract for work that is subject to this
 27 chapter, unless the contractor had a valid license issued by the [board] **department** and properly
 28 endorsed for the work performed:

29 (a) At the time the contractor bid or entered into the contract for performance of the work; and

30 (b) Continuously while performing the work for which compensation is sought.

31 (2) The [board] **department**, arbitrator or court may not apply the provisions of subsection (1)
 32 of this section to a contractor if the [board] **department**, arbitrator or court determines that:

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

35 (A) The contractor was not aware of the requirement that the contractor be licensed or properly
 36 endorsed for the work performed, and the contractor submitted a completed application for a license
 37 within a number of days established by the [board] **department**, but not more than 90 days, of the
 38 date the contractor became aware of the requirement;

39 (B) At the time the contractor perfected a construction lien or commenced any proceeding sub-
 40 ject to the provisions of subsection (1) of this section, the contractor was licensed by the [board]
 41 **department** and properly endorsed for the work performed; and

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

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

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

4 (B) Except for perfection of a construction lien and a court action to foreclose the lien, at the
 5 time the contractor commenced any proceeding subject to the provisions of subsection (1) of this
 6 section the contractor's license was renewed under ORS 701.063 to include the entire time period
 7 for which a license was required under subsection (1) of this section; and

8 (C) For perfection of a construction lien and a court action to foreclose the lien, the contractor's
 9 license was renewed under ORS 701.063 for the entire time period for which a license was required
 10 under subsection (1) of this section, but not later than 90 days following perfection of the lien; or

11 (c) The proceeding:

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

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

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

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

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

19 (3) If a contractor falsely swears to information provided under ORS 701.046 or knowingly vio-
 20 lates the provisions of ORS 656.029, 670.600 or 701.046, the contractor may not perfect a con-
 21 struction lien, file a complaint with the [board] **department** or commence an arbitration or a court
 22 action for compensation for the performance of any work on a residential structure or for the breach
 23 of any contract for work on a residential structure that is subject to this chapter.

24 **SECTION 73.** ORS 701.133 is amended to read:

25 701.133. (1) Unless otherwise provided by the [*Construction Contractors Board*] **Department of**
 26 **Consumer and Business Services** by rule, before filing a complaint under ORS 701.139, a person
 27 must send notice to the contractor that the person intends to file the complaint. The person must
 28 send the notice at least 30 days before filing the complaint. The notice must be mailed by certified
 29 mail to the last known address of the contractor as shown in [board] **department** records. The
 30 [board] **department** by rule may:

31 (a) Specify the manner in which the person may show compliance with this subsection at the
 32 time of filing the complaint.

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

36 (2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than
 37 45 days before expiration of the time limitation under ORS 701.143 for the [board] **department** to
 38 receive the complaint, the time limitation for the [board] **department** to receive the complaint does
 39 not expire until 60 days after the notice is mailed.

40 (3) The [board] **department** by rule may impose a processing fee for complaints filed under ORS
 41 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for
 42 a plaintiff filing a civil action in circuit court. The [board] **department** may impose different pro-
 43 cessing fees for complaints processed under ORS 701.145 than for complaints processed under ORS
 44 701.146.

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

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

3 (b) Must provide that the [board] **department** may waive or defer all or part of the processing
4 fee upon application by the person filing the complaint that shows the person is unable to pay all
5 or part of the fee. The application must be made under oath and notarized. The application must
6 show the average monthly income and expenses of the complainant, assets and liabilities of the
7 complainant and any other information required by [board] **department** rule.

8 (c) May provide for the processing fee to be waived for all complaints that are based on the
9 furnishing of labor by a complainant to a contractor. The [board] **department** may provide for
10 processing fee waiver under this paragraph only if, in the opinion of the [board] **department**, a
11 majority of complainants who file complaints based on the furnishing of labor to contractors are
12 eligible for fee waivers as described in paragraph (b) of this subsection.

13 **SECTION 74.** ORS 701.139 is amended to read:

14 701.139. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
15 **VICES** may determine the validity of a complaint described in ORS 701.140 filed against a licensed
16 contractor. A person must file the complaint within the applicable time limitation described in ORS
17 701.143. The complaint must be filed and resolved as follows:

18 (1) A complaint against a residential contractor that is not also endorsed as a commercial con-
19 tractor must be resolved as provided in ORS 701.145.

20 (2) A complaint against a commercial contractor that is not also endorsed as a residential con-
21 tractor must be resolved as provided in ORS 701.146.

22 (3) A complaint against a contractor that is endorsed as both a residential contractor and a
23 commercial contractor:

24 (a) That involves work on a residential structure or an appurtenance to a residential structure
25 must be resolved as provided under ORS 701.145.

26 (b) That involves work on a small commercial structure or an appurtenance to a small com-
27 mercial structure may be resolved as provided in ORS 701.145 or 701.146, at the complainant's
28 election.

29 (c) That involves work on a large commercial structure or an appurtenance to a large commer-
30 cial structure must be resolved as provided in ORS 701.146.

31 (4) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS 701.148,
32 with prior agreement of the complainant and the licensed contractor, a complaint may be resolved
33 by the [board] **department** through binding arbitration under ORS 701.148.

34 **SECTION 75.** ORS 701.140 is amended to read:

35 701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the
36 performance, of work that requires a contractor license issued by the [*Construction Contractors*
37 *Board*] **Department of Consumer and Business Services**. The complaint must be of one or more
38 of the following types:

39 (1) A complaint against a contractor by the owner of a structure or other real property for the
40 following:

41 (a) Negligent work.

42 (b) Improper work.

43 (c) Breach of contract.

44 (2) A complaint against a contractor by the owner of a structure or other real property to dis-
45 charge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060

1 and 87.075 to 87.093 under circumstances described under this subsection. If the complaint is pro-
 2 cessed under ORS 701.145, the [*Construction Contractors Board*] **department** may reduce the amount
 3 of the complaint by any amount the complainant owes the contractor. The [*board*] **department** shall
 4 process complaints described in this subsection under ORS 701.145 only if:

5 (a) The owner paid the contractor for that contractor's work subject to this chapter;

6 (b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to
 7 87.093 because the contractor failed to pay the person claiming the lien for that person's contribu-
 8 tion toward completion of the improvement; and

9 (c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).

10 (3) A complaint against a licensed subcontractor by a licensed contractor for the following:

11 (a) Negligent work;

12 (b) Improper work; or

13 (c) Breach of contract.

14 (4) A complaint by a person furnishing labor to a contractor or owed employee benefits by a
 15 contractor.

16 (5) A complaint, as limited by rule of the [*board*] **department**, by a person furnishing material
 17 or renting or supplying equipment to a contractor. The minimum limit set by the [*board*] **depart-**
 18 **ment** may not exceed \$150.

19 (6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising
 20 out of a contract.

21 **SECTION 76.** ORS 701.143 is amended to read:

22 701.143. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
 23 **VICES** may not process a complaint against a licensed contractor, including a complaint based upon
 24 a court judgment or an arbitration award, unless the complaint is filed with the [*board*] **department**
 25 in a timely manner as follows:

26 (1) Except as otherwise provided in this section, if the owner of a new structure files the com-
 27 plaint, the [*board*] **department** must receive the complaint no later than the earlier of:

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

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

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

33 (3) Regardless of whether the complaint involves a new or an existing structure, if the owner
 34 of the structure files the complaint and the licensed contractor failed to begin the work, the
 35 [*board*] **department** must receive the complaint no later than one year after the date the parties
 36 entered into the contract.

37 (4) Regardless of whether the complaint involves a new or an existing structure, if the owner
 38 of the structure files the complaint and the licensed contractor failed to substantially complete the
 39 work, the [*board*] **department** must receive the complaint no later than one year after the date the
 40 contractor ceased to work on the structure.

41 (5) Except as otherwise provided in this section, if a licensed contractor files the complaint
 42 against the licensed contractor performing work as a subcontractor on a new structure, the
 43 [*board*] **department** must receive the complaint no later than the earlier of:

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

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

1 (6) Except as otherwise provided in this section, if a licensed contractor files the complaint
2 against the licensed contractor performing work as a subcontractor on an existing structure, the
3 [board] **department** must receive the complaint no later than 14 months after the date the work on
4 the structure was substantially completed.

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

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

12 **SECTION 77.** ORS 701.145 is amended to read:

13 701.145. For a complaint described in ORS 701.139 (1) or (3)(a) or a complaint under ORS 701.139
14 (3)(b) that a complainant elects to have resolved under this section:

15 (1) The complainant must file the complaint with the [*Construction Contractors Board*] **Depart-**
16 **ment of Consumer and Business Services** in a form prescribed by the [board] **department**.

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

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

21 (b) The [board] **department** determines that the nature or complexity of the dispute described
22 in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

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

25 (a) The complainant does not respond to a [board] **department** request and the request is nec-
26 essary to the [board's] **department's** investigation of the complaint.

27 (b) The complainant does not allow the [board] **department** to conduct one or more on-site
28 meetings to mediate or investigate the complaint.

29 (c) The complainant does not permit the contractor against whom the complaint is filed to be
30 present at an on-site investigation made by the [board] **department**.

31 (d) The [board] **department** determines that the contractor against whom the complaint is filed
32 is capable of complying with recommendations made by the [board] **department** relative to the
33 complaint, but the complainant does not permit the contractor to comply with the recommendations.
34 The [board] **department** may refuse to accept or further process a complaint under this paragraph
35 only if the contractor was licensed at the time the work was first performed and is licensed at the
36 time the [board] **department** makes its recommendations.

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

39 (4) Upon acceptance of the complaint, the [board] **department** shall give notice to the contrac-
40 tor against whom the complaint is made and shall initiate proceedings to determine the validity of
41 the complaint. If, after investigation, the [board] **department** determines that a violation of this
42 chapter or of any rule adopted thereunder has occurred, or damage has been caused by the con-
43 tractor, the [board] **department** may recommend to the contractor such action as the [board] **de-**
44 **partment** considers appropriate to compensate the complainant. If the contractor performs
45 accordingly, the [board] **department** shall give that fact due consideration in any subsequent dis-

1 disciplinary proceeding brought by the [board] **department**. The [board] **department** may conduct one
 2 or more on-site meetings to mediate or investigate the complaint.

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

6 (a) Issue a proposed default order under ORS 183.417 to become effective only if a party does
 7 not request a contested case hearing; or

8 (b) Refer the matter for hearing.

9 (6) The [board] **department** shall send a copy of the notice and any proposed order described
 10 in subsection (5) of this section to the surety on the contractor bond required by ORS 701.068.

11 **SECTION 78.** ORS 701.146 is amended to read:

12 701.146. For a complaint described in ORS 701.139 (2) or (3)(c) or a complaint under ORS 701.139
 13 (3)(b) that a complainant elects to have resolved under this section:

14 (1) The person seeking to file the complaint with the [*Construction Contractors Board*] **Depart-**
 15 **ment of Consumer and Business Services** must:

16 (a) Bring an action on the dispute against the licensed contractor in a court of competent ju-
 17 risdiction; or

18 (b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in
 19 conformance with ORS 36.600 to 36.740.

20 (2) The complainant must file the complaint with the [*Construction Contractors Board*] **depart-**
 21 **ment** by delivering to the [board] **department** a copy of the complainant's court pleading or the
 22 demand for arbitration or other document necessary to initiate arbitration. The pleading, demand
 23 or other document must be accompanied by a completed [board] **department** complaint form. The
 24 complainant must also give notice to the surety on the bond by delivering to the surety a copy of
 25 the complainant's court pleading or the demand for arbitration or other document necessary to ini-
 26 tiate arbitration and a copy of the completed [board] **department** complaint form. Delivery to the
 27 [board] **department** and the surety must be accomplished by certified mail, return receipt requested,
 28 no later than the earlier of:

29 (a) The 90th day after filing the court action or after filing or making the arbitration demand
 30 or other initiation of arbitration;

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

32 (c) The 30th day before:

33 (A) The court issues a judgment in the action; or

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

35 (3) Filing the complaint with the [board] **department** under subsection (2) of this section con-
 36 stitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS
 37 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

38 (4) Except as provided in this subsection and subsection (7) of this section, if the complainant
 39 properly gives notice to the surety under subsection (2) of this section, a judgment or award against
 40 the contractor entered in the action or arbitration is binding on the surety. If the complainant de-
 41 livers the notice required under subsection (2) of this section to the wrong surety, the surety re-
 42 ceiving the notice may avoid being bound by a judgment or award by delivering notice of the
 43 mistake to the complainant or the complainant's attorney of record, and to the [board]
 44 **department**, on or before the 30th day after the surety receives notice under subsection (2) of this
 45 section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by

1 facsimile machine or other form of transmission with an acknowledgment of receipt.

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

9 (6) If a court issues a judgment on an action, or reduces an arbitration award to judgment,
 10 against a contractor on a complaint described in subsection (1) of this section, the complainant must
 11 deliver a certified copy of the judgment to the [board] **department** and to the surety no later than
 12 the 30th day after entry of the judgment in order to maintain the complaint and possibly receive
 13 payment from the bond. The entry of a final judgment against the contractor concludes the con-
 14 tractor's involvement in any proceedings to determine whether the complaint is subject to payment
 15 from the bond. The complainant and the surety are the only parties to the administrative process
 16 set forth in subsection (7) of this section.

17 (7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection
 18 (6) of this section, the [board] **department** shall issue a proposed order in the amount of the judg-
 19 ment together with any costs, interest and attorney fees awarded under the judgment, to the extent
 20 that the judgment, costs, interest and fees are within the jurisdiction of the [board] **department**.
 21 The [board's] **department's** determination of the complaint is limited to whether the complaint
 22 comes within the jurisdiction of the [board] **department** and is subject to payment by the surety.
 23 The [board] **department** shall issue the proposed order in a form that indicates the surety's maxi-
 24 mum liability to the complainant. If a hearing is not requested within the time set forth in the pro-
 25 posed order, the proposed order becomes final without any further action by the [board]
 26 **department**. If a hearing is requested, unless review of an issue is precluded under subsection (5)
 27 of this section, the [board] **department** may determine:

28 (a) Whether the complaint was timely filed with the [board] **department** as provided in ORS
 29 701.143.

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

32 (c) Whether the complaint is for work subject to this chapter.

33 (d) The extent of the surety's liability to the complainant.

34 **SECTION 79.** ORS 701.148 is amended to read:

35 701.148. (1) Subject to subsection (4) of this section, if the resolution of a complaint under ORS
 36 701.145 requires a hearing, the [Construction Contractors Board] **Department of Consumer and**
 37 **Business Services** may require that the hearing be conducted as a binding arbitration under rules
 38 adopted by the [board] **department** under subsection (3) of this section. This subsection does not
 39 authorize the [board] **department** to require binding arbitration of a complaint that is subject to
 40 ORS 701.146.

41 (2) The [board] **department** may use mediation or arbitration to resolve a construction dispute
 42 between any parties who agree to follow the rules of the [board] **department**, other than a dispute
 43 involving work on a large commercial structure.

44 (3) Except as provided in this subsection, rules adopted by the [board] **department** to regulate
 45 arbitration under subsections (1) and (2) of this section must substantially conform with the pro-

1 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
2 36.690 to 36.740. The rules may:

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

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

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

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

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

11 (4) A party to a complaint that is subject to a *[board]* **department** order of binding arbitration
12 under subsection (1) of this section may avoid the arbitration if the party requests to have the
13 complaint resolved through a contested case hearing or files a court action. A party making a
14 hearing request or filing a court action under this subsection is subject to the following provisions:

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

19 (b) If the party files a court action, the party must, within the time specified in paragraph (c)
20 of this subsection, deliver a copy of the party's court pleading to the *[board]* **department** and to
21 all persons entitled by *[board]* **department** rule to receive a copy of the pleading. If the party filing
22 the court action is the complainant to the *[board]* **department**, the complainant must plead all facts
23 and issues of the *[board]* **department** complaint in the court action. If the court action is filed by
24 the contractor against whom a *[board]* **department** complaint is alleged, the court action must be
25 an action for damages, an action for declaratory judgment or another action that allows the
26 *[board]* **department** complainant to file a response pleading all facts and issues of the *[board]* **de-**
27 **partment** complaint. The *[board]* **department** complainant has the burden of proving the elements
28 of the *[board]* **department** complaint in a court action described in this paragraph.

29 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver the contested
30 case hearing request or the copy of the party's court pleading to the *[board]* **department** as de-
31 scribed in paragraphs (a) and (b) of this subsection no later than the 30th day after the *[board]* **de-**
32 **partment** sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a
33 request or court pleading under this paragraph constitutes consent to the binding arbitration.

34 (d) If a party makes a timely request under paragraph (a) of this subsection for a contested case
35 hearing and another party timely files a court action and complies with paragraph (b) of this sub-
36 section, the filing of the court action supersedes the request for a contested case hearing.

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

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

41 (g) The provisions of paragraph (b) of this subsection are in addition to any other requirements
42 imposed by law regarding the filing of a court action.

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

1 dispute.

2 **SECTION 80.** ORS 701.149 is amended to read:

3 701.149. (1) An arbitration conducted under ORS 701.148 must be held before an administrative
4 law judge assigned under ORS 183.600 to 183.690 to act as arbitrator on behalf of the [*Construction*
5 *Contractors Board*] **Department of Consumer and Business Services**. The assignment of an ad-
6 ministrative law judge to act as arbitrator is subject to a request for a different arbitrator under
7 ORS 183.645 or a rule adopted pursuant to ORS 183.645.

8 (2) If a party to a complaint under ORS 701.145 requests a contested case hearing, the [*board*]
9 **department** shall schedule the hearing.

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

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

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

20 (6) If a complainant to the [*board*] **department** files a court action, the [*board*] **department**
21 may require that the complainant provide status reports on the pending court action. The [*board*]
22 **department** may dismiss or close a complaint filed under ORS 701.139 if the complainant fails to
23 submit status reports on a pending court action.

24 (7) ORS 183.600 to 183.690 do not limit in any way the ability of the [*board*] **department** to
25 make full use of alternative dispute resolution, including mediation or arbitration, to resolve com-
26 plaints against contractors filed under ORS 701.139.

27 **SECTION 81.** ORS 701.150 is amended to read:

28 701.150. (1) A [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
29 **VICES** final order that is not paid by the contractor and that:

30 (a) Arises out of a complaint filed under ORS 701.145 must be satisfied from a bond required for
31 a residential contractor.

32 (b) Arises out of a complaint filed under ORS 701.146 must be satisfied from a bond required for
33 a commercial contractor.

34 (2) If a [*board*] **department** final order is not paid by the contractor, the [*board*] **department**
35 shall notify the surety on the bond. The surety may not pay on a complaint until the surety receives
36 notice from the [*board*] **department** that the complaint is ready for payment.

37 (3) Notwithstanding ORS 701.153 and 701.157, a bond is not subject to payment for a complaint
38 that is filed more than 14 months after the earlier of:

39 (a) The expiration or cancellation date of the license that was in force when the work that is
40 the subject of the complaint was completed or abandoned; or

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

42 **SECTION 82.** ORS 701.153 is amended to read:

43 701.153. (1) If an order of the [*Construction Contractors Board*] **Department of Consumer and**
44 **Business Services** that determines a complaint under ORS 701.145 becomes final by operation of
45 law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant

1 may file the order with the county clerk in any county of this state.

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

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

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

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

15 (b) A 90-day period begins on the date the first complaint is filed with the *[board]*
 16 **department**. Subsequent 90-day periods begin on the date the first complaint is filed with the
 17 *[board]* **department** after the close of the preceding 90-day period.

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

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

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

29 **SECTION 83.** ORS 701.157 is amended to read:

30 701.157. (1)(a) Payments from the surety bond of a commercial contractor pursuant to *[Construction Contractors Board]* **Department of Consumer and Business Services** order and notice
 31 are satisfied in the following priority in any 90-day period:
 32

33 (A) *[Board]* **Department** orders as a result of complaints against a commercial contractor by
 34 a person furnishing labor to a contractor or owed employee benefits by a contractor have payment
 35 priority to the full extent of the bond over all other types of complaints.

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

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

42 (b) A 90-day period begins on the date the first complaint is filed with the *[board]*
 43 **department**. Subsequent 90-day periods begin on the date the first complaint is filed with the
 44 *[board]* **department** after the close of the preceding 90-day period.

45 (2) If the total complaints filed with the *[board]* **department** against a commercial contractor

1 within 90 days after the [board] **department** receives notice of the first complaint against the con-
 2 tractor exceed the amount of the bond available for those complaints, the bond shall be apportioned
 3 as the [board] **department** determines, subject to the priorities established under this section.

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

9 **SECTION 84.** ORS 701.160 is amended to read:

10 701.160. Notwithstanding ORS 9.320:

11 (1) A party may appear or be represented by an individual who is not a member of the Oregon
 12 State Bar in a proceeding before the [*Construction Contractors Board*] **Department of Consumer**
 13 **and Business Services** if:

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

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

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

20 (d) The party is a manager-managed limited liability company as defined in ORS 63.001 and the
 21 individual is a manager of the company; or

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

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

31 **SECTION 85.** ORS 701.180 is amended to read:

32 701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or
 33 any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings
 34 within 30 days after notification by the [*Construction Contractors Board*] **Department of Consumer**
 35 **and Business Services** of a complaint under ORS 701.145 is a waiver by the contractor of any
 36 contractual right to mediation or arbitration.

37 **SECTION 86.** ORS 701.205 is amended to read:

38 701.205. (1)(a) The Construction Contractors Board is established[, *consisting*] **within the De-**
 39 **partment of Consumer and Business Services. The board consists** of nine members appointed
 40 by the [*Governor subject to confirmation by the Senate in the manner provided by law.*] **Director of**
 41 **the Department of Consumer and Business Services. Of the members:**

42 (A) Three [*of the members shall*] **must** be residential contractors who primarily work on resi-
 43 dential or small commercial structures, including one contractor engaged in the business of remod-
 44 eling.[,]

45 (B) **Two must be commercial general contractors who primarily work on large commer-**

1 **cial structures.**

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

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

5 (E) Two *[shall]* **must** be public members. *[and one shall be an elected representative of a gov-*
 6 *erning body of local government. Two of the members shall be commercial general contractors who*
 7 *primarily work on large commercial structures, and one shall be a commercial specialty contractor who*
 8 *primarily works on large commercial structures or a residential limited contractor.]*

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

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

15 (3) In order to be eligible for board membership, the six contractor members of the board
 16 *[shall]* **must** be licensed under this chapter and *[shall]* **must** maintain their licenses in good order
 17 during their term of office.

18 (4) **In addition to any other function delegated to the board by the director, the primary**
 19 **function of the board is to counsel and advise the director in the administration and**
 20 **enforcement of this chapter by the department.**

21 **SECTION 87.** ORS 701.215 is amended to read:

22 701.215. (1) The Construction Contractors Board shall select from among its members a chair-
 23 person, a vice chairperson and such other officers for such terms and with such duties and powers
 24 necessary for the performance of their duties as the board determines.

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

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

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

31 **SECTION 88.** ORS 701.225 is amended to read:

32 701.225. (1) The *[Construction Contractors Board]* **Department of Consumer and Business**
 33 **Services** may investigate the activities of any person engaged in the building and construction in-
 34 dustry to determine compliance with this chapter.

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

38 (3) Any inspector authorized by the *[board]* **department** to determine compliance with the pro-
 39 visions of this chapter is authorized to require any person who is engaged in any activity regulated
 40 by this chapter to demonstrate proof of compliance with the licensing requirements of this chapter.
 41 If a person who is contracting directly with the owner of a structure does not demonstrate proof
 42 of compliance with the licensing requirements of this chapter, the inspector shall give notice of
 43 noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state
 44 that the person is not in compliance with the licensing requirements of this chapter and shall pro-
 45 vide that unless the person demonstrates proof of compliance within 10 days of the date of the no-

1 tice, the inspector may by order stop all work then being done by the person. The notice of
 2 noncompliance shall be served upon the person and shall be served upon or delivered to the owner
 3 of each structure upon which the person is then performing work under contract, or mailed to all
 4 persons who are mortgagees or trust deed beneficiaries of record with respect to the real property
 5 upon which each such structure is situated. If more than one person is the owner of any such
 6 structure, a copy of the notice need be given to only one of such persons. If after receipt of the
 7 notice of noncompliance the person fails within the 10-day period specified in the notice to demon-
 8 strate proof of compliance with the licensing requirements of this chapter, the inspector is author-
 9 ized to order the work stopped by notice in writing served on any persons engaged in the activity.
 10 Any person so notified shall stop such work until proof of compliance is demonstrated. However, the
 11 inspector may not order the work stopped until at least 10 days after the copies of the notice of
 12 noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and
 13 trust deed beneficiaries specified in this subsection.

14 (4) The [board] **department** has the power to administer oaths, issue notices and subpoenas in
 15 the name of the [board] **department**, compel the attendance of witnesses and the production of ev-
 16 idence, hold hearings and perform such other acts as are reasonably necessary to carry out its du-
 17 ties under this chapter.

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

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

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

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

28 **SECTION 89.** ORS 701.227 is amended to read:

29 701.227. (1) The [Construction Contractors Board] **Department of Consumer and Business**
 30 **Services** shall begin an action to determine whether a contractor or a subcontractor shall be con-
 31 sidered not qualified to hold or participate in a public contract for a public improvement upon re-
 32 ceipt of information from a public contracting agency or from any person who supplied labor or
 33 materials in connection with a public contract for a public improvement indicating that the con-
 34 tractor or subcontractor has not made payment to persons who supplied labor or materials within
 35 60 days after the date when the payment was received by the contractor or subcontractor and that
 36 the payment was not a subject of a good faith dispute as defined in ORS 279C.580.

37 (2) If the [board] **department** determines after notice and opportunity for hearing that a con-
 38 tractor or a subcontractor did not make payment to persons who supplied labor or materials in
 39 connection with a public contract for a public improvement within 60 days after the date when
 40 payment was received by the contractor or subcontractor, the [board] **department** shall place the
 41 contractor or the subcontractor on the list of persons who have been determined to be not qualified
 42 to hold or participate in a public contract for a public improvement. The [board] **department** may
 43 not place a contractor or subcontractor on the list if the only reason that the contractor or sub-
 44 contractor did not make payment to a person when payment was due is that the contractor or sub-
 45 contractor did not receive payment from the public contracting agency, contractor or subcontractor

1 when payment was due. The contractor or subcontractor shall remain on the list for a period of not
 2 less than six months.

3 (3) If the [board] **department** determines that the information supplied to the [board] **depart-**
 4 **ment** against a contractor or subcontractor was supplied in bad faith or was false, the person who
 5 supplied the information in bad faith or supplied false information shall be placed on the list of
 6 persons who have been determined to be not qualified to hold or participate in a public contract for
 7 a public improvement.

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

14 **SECTION 90.** ORS 701.230 is amended to read:

15 701.230. At least once each month, the [*Construction Contractors Board*] **Department of Con-**
 16 **sumer and Business Services** shall provide to investigative units of the Department of Revenue[,
 17 *Department of Consumer and Business Services*] and **the** Employment Department the name and ad-
 18 dress of each person who acts as a contractor in violation of this chapter or who knowingly assists
 19 an unlicensed person to act in violation of this chapter.

20 **SECTION 91.** ORS 701.230, as amended by section 35, chapter 836, Oregon Laws 2007, is
 21 amended to read:

22 701.230. At least once each month, the [*Construction Contractors Board*] **Department of Con-**
 23 **sumer and Business Services** shall provide to investigative units of the Department of Revenue[,
 24 *Department of Consumer and Business Services*] and **the** Employment Department the name and ad-
 25 dress of each person who acts as a contractor in violation of this chapter or who knowingly assists
 26 an unlicensed person or a licensed contractor that is not properly endorsed to act in violation of
 27 this chapter.

28 **SECTION 92.** ORS 701.235 is amended to read:

29 701.235. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**
 30 **Services** shall adopt rules to carry out the provisions of this chapter including, but not limited to,
 31 rules that:

- 32 (a) Establish language for surety bonds;
- 33 (b) Establish processing requirements for different types of complaints described in this chapter;
- 34 (c) Limit whether a complaint may be processed by the [board] **department** if there is no direct
 35 contractual relationship between the complainant and the contractor;
- 36 (d) Subject to ORS 701.153 and 701.157, exclude or limit recovery from the contractor's bond
 37 required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges,
 38 costs and attorney fees arising from commencing the arbitration or court action and proving dam-
 39 ages; and
- 40 (e) Designate a form to be used by an owner of residential property under ORS 87.007 for the
 41 purpose of indicating the method the owner has selected to comply with the requirements of ORS
 42 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

43 (2) The [board] **department** may adopt rules prescribing terms and conditions under which a
 44 contractor may substitute a letter of credit from a bank authorized to do business in this state in-
 45 stead of the bond requirements prescribed in ORS 701.068.

1 **SECTION 93.** ORS 701.238 is amended to read:

2 701.238. (1) Before July 1 of each year, the [*Construction Contractors Board*] **Department of**
 3 **Consumer and Business Services** shall determine the amounts of the fees to be charged for ap-
 4 plications under ORS 701.056 for the issuance or renewal of contractor licenses. The fee amounts
 5 are subject to prior approval of the Oregon Department of Administrative Services and a report to
 6 the Emergency Board prior to adoption. The fee amounts shall be within the budget authorized by
 7 the Legislative Assembly as that budget may be modified by the Emergency Board. The fee amounts
 8 established under this section may not exceed the cost of administering the regulatory program of
 9 the [*board*] **Department of Consumer and Business Services** under this chapter, as authorized
 10 by the Legislative Assembly within the [*board's*] **department's** budget, as the budget may be modi-
 11 fied by the Emergency Board.

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

14 **SECTION 94.** ORS 701.240 is amended to read:

15 701.240. (1) The [*Construction Contractors Board*] **Department of Consumer and Business**
 16 **Services** shall supply the Department of Revenue and the Employment Department with a partial
 17 or complete list of licensees as deemed necessary by the [*board*] **Department of Consumer and**
 18 **Business Services**.

19 (2) The lists required by subsection (1) of this section shall contain the name, address, Social
 20 Security or federal employer identification number of each licensee or such other information as the
 21 [*departments*] **Department of Revenue or Employment Department** may by rule require.

22 **SECTION 95.** ORS 701.250 is amended to read:

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

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

29 **SECTION 96.** ORS 701.255 is amended to read:

30 701.255. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
 31 **VICES** may retain 20 percent annually from the funds collected under ORS 701.992. The amount re-
 32 tained under this section shall be continuously appropriated for the [*board's*] **department's** costs
 33 of collection of civil penalties imposed by order of the [*board*] **department**.

34 **SECTION 97.** ORS 701.260 is amended to read:

35 701.260. [(1) *From within its membership, the Construction Contractors Board shall appoint three*
 36 *members, including one of the public members or the elected official, as an appeal committee. The board*
 37 *may appoint one or more appeal committees. At least one residential contractor shall be appointed to*
 38 *any committee that hears appeals involving residential complaints.*]

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

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

1 **SECTION 98.** ORS 701.295 is amended to read:

2 701.295. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
 3 **vices** shall investigate allegations of illegal activity in the construction industry and seek civil or
 4 criminal prosecution of illegal activity that warrants more than an administrative sanction.

5 **SECTION 99.** ORS 701.305 is amended to read:

6 701.305. (1) A contractor may not perform work subject to this [*section*] **chapter** for an owner
 7 of a residential structure or zero-lot-line dwelling without a written contract if the aggregate con-
 8 tract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the
 9 course of performance the contract exceeds that amount, the contractor shall mail or otherwise
 10 deliver a written contract to the owner not later than five days after the contractor knows or should
 11 reasonably know that the contract price will exceed \$2,000. Failure to have a written contract will
 12 not void the contract.

13 (2) The [*Construction Contractors Board*] **Department of Consumer and Business Services**
 14 shall adopt rules that require a contractor to use standard contractual terms in a construction
 15 contract for which subsection (1) of this section requires a written contract. The standard contrac-
 16 tual terms shall be clear, use words of common understanding and shall include but need not be
 17 limited to:

18 (a) A statement that the contractor is licensed by the [*board*] **department**;

19 (b) The name, license number, address and telephone number of the contractor as shown on
 20 [*board*] **department** records on the date the contract is entered into;

21 (c) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320,
 22 and indication of the acceptance or rejection of the offered warranty;

23 (d) For a residential structure contract, a summary of the notices required under ORS 87.093
 24 or under rules adopted under ORS 701.330 and 701.335 (2) on the contractor's bid proposal;

25 (e) Acknowledgment of the receipt of the maintenance information required by the [*board*] **de-**
 26 **partment** under ORS 701.335; and

27 (f) An explanation of the property owner's rights under the contract, including, but not limited
 28 to, the ability to file a claim with the [*board*] **department** and the existence of any mediation or
 29 arbitration provision in the contract, set forth in a conspicuous manner as defined by the [*board*]
 30 **department** by rule.

31 **SECTION 100.** ORS 701.315 is amended to read:

32 701.315. A contract that is for the performance of work on a residential structure and that is
 33 subject to this chapter may not contain a provision that limits the right of a person to file a com-
 34 plaint described in ORS 701.140 with the [*Construction Contractors Board*] **Department of Con-**
 35 **sumer and Business Services**. A contract described in this section may contain a provision
 36 requiring mediation or arbitration of a dispute arising from the contract.

37 **SECTION 101.** ORS 701.325 is amended to read:

38 701.325. (1) If a person is required under this chapter to be licensed as a contractor, a city,
 39 county or state agency may not issue the person a building permit unless the person has a current,
 40 valid contractor license. A city, county or state agency that requires the issuance of a permit for
 41 the construction, alteration, improvement, demolition, movement or repair of a building, structure
 42 or appurtenances to a structure shall, as a condition for issuing the permit, require the applicant
 43 for a permit to file a written statement signed by the applicant. The statement must affirm that the
 44 applicant is licensed under this chapter, give the license number and state that the license is in full
 45 force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for

1 the exemption. The city, county or state agency shall list the contractor’s license number on the
2 permit issued to that contractor.

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

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

12 (b) I own, reside in or will reside in the completed dwelling. My general contractor is
13 _____, [*Construction Contractors Board*] **construction contractor** license no.
14 _____, license expiration date _____. I will instruct my general contractor that
15 all subcontractors who work on this dwelling must be licensed [*with the Construction Contractors*
16 *Board*] **as construction contractors by the Department of Consumer and Business Services;**
17 or

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

20 (d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcon-
21 tractors licensed [*with the Construction Contractors Board*] **as construction contractors by the**
22 **Department of Consumer and Business Services.**

23 (e) If I change my mind and do hire a general contractor, I will contract with a general con-
24 tractor who is licensed [*with the Construction Contractors Board*] **by the Department of Consumer**
25 **and Business Services** and I will immediately notify the office issuing this building permit of the
26 name of the general contractor _____.

27 _____
28
29 (3) The [*Construction Contractors Board*] **Department of Consumer and Business Services**
30 shall adopt by rule a form titled “Information Notice to Property Owners About Construction Re-
31 sponsibilities” that clearly describes in everyday language the responsibilities property owners are
32 undertaking by acting as their own general contractor and the problems that could develop. The
33 responsibilities described in the form shall include, but not be limited to:

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

36 (b) Workers’ compensation insurance on workers.

37 (c) Liability and property damage insurance.

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

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

45 (6) The provisions of this chapter are exclusive and a city, county or other political subdivision

1 may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the
2 regulatory or surety registration of any contractor licensed with the [board] **department**. This
3 subsection does not affect the authority of a city, county or political subdivision to:

4 (a) License and levy and collect a general and nondiscriminatory license fee levied upon all
5 businesses or upon business conducted by any firm within the city, county or political subdivision;

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

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

9 **SECTION 102.** ORS 701.325, as amended by section 16a, chapter 836, Oregon Laws 2007, is
10 amended to read:

11 701.325. (1) If a person is required under this chapter to be licensed as a contractor, a city,
12 county or state agency may not issue the person a building permit unless the person has a current,
13 valid contractor license properly endorsed for the work to be performed. A city, county or state
14 agency that requires the issuance of a permit for the construction, alteration, improvement, demo-
15 lition, movement or repair of a building, structure or appurtenances to a structure shall, as a con-
16 dition for issuing the permit, require the applicant for a permit to file a written statement signed
17 by the applicant. If the applicant is a contractor, the contractor shall provide the contractor's li-
18 cense number and state that the license is in full force and effect. If the applicant is exempt from
19 licensing under this chapter, the applicant shall state the basis for the exemption. The city, county
20 or state agency shall list the contractor's license number on the permit issued to that contractor.

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

26 _____
27

28 (a) I have read and understand the Information Notice to Property Owners About Construction
29 Responsibilities; and

30 (b) I own, reside in or will reside in the completed dwelling. My residential general contractor
31 is _____, [*Construction Contractors Board*] **construction contractor** license no.
32 _____, license expiration date _____. I will instruct my contractor that all
33 subcontractors who work on this dwelling must be licensed [*with the Construction Contractors*
34 *Board*] **as construction contractors by the Department of Consumer and Business Services**
35 and properly endorsed for the work to be performed; or

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

38 (d) I will be my own contractor and, if I hire contractors, I will hire only contractors licensed
39 [*with the Construction Contractors Board*] **by the Department of Consumer and Business Ser-**
40 **vices** and properly endorsed for the work to be performed.

41 (e) If I change my mind and do hire a residential general contractor, I will contract with a
42 contractor who is licensed [*with the Construction Contractors Board*] **by the Department of Con-**
43 **sumer and Business Services** and properly endorsed for the work to be performed. I will imme-
44 diately notify the office issuing this building permit of the name and license number of the
45 contractor_____.

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(3) The [*Construction Contractors Board*] **Department of Consumer and Business Services** shall adopt by rule a form titled “Information Notice to Property Owners About Construction Responsibilities” that clearly describes in everyday language the responsibilities property owners are undertaking by acting as their own contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers’ compensation insurance on workers.

(c) Liability and property damage insurance.

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

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

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

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

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

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

SECTION 103. ORS 701.330 is amended to read:

701.330. (1) The [*Construction Contractors Board*] **Department of Consumer and Business Services** shall adopt by rule a consumer notice form designed to inform a property owner of the actions the property owner should take to protect the owner in a residential repair, remodel or construction project. The form shall briefly describe and identify additional sources of information regarding:

- (a) Contractor licensing standards;
- (b) Contractor bond and insurance requirements;
- (c) The requirement to offer a warranty under ORS 701.320; and
- (d) Other information specified by the [*board*] **department**.

(2) The [*board*] **department** shall adopt by rule a notice of procedure form that briefly describes and identifies additional sources of information regarding the procedure described under ORS 701.560 to 701.595 and other information specified by the [*board*] **department**.

(3) The consumer notice form and notice of procedure form adopted by the [*board*] **department** shall include signature lines for the contractor and the property owner.

(4) The [*board*] **department** shall adopt rules specifying the time and manner for a contractor to deliver a consumer notice form and notice of procedure form to a property owner.

(5) The [*board*] **department** may adopt rules that require a contractor to maintain evidence of

1 delivery of the consumer notice form and notice of procedure form and that specify the retention
2 period for and the form of that evidence.

3 **SECTION 104.** ORS 701.335 is amended to read:

4 701.335. (1) A contractor that constructs a new residential structure or zero-lot-line dwelling
5 shall provide a recommended maintenance schedule to the first purchaser or owner of the structure
6 or dwelling.

7 (2) The [*Construction Contractors Board*] **Department of Consumer and Business Services**
8 shall adopt rules specifying the minimum information that a contractor shall provide to a first pur-
9 chaser or owner under subsection (1) of this section. The minimum information shall include, but
10 need not be limited to, the following:

11 (a) Definitions and descriptions of moisture intrusion and water damage.

12 (b) An explanation of how moisture intrusion and water damage can occur.

13 (c) A description and recommended schedule for maintenance to prevent moisture intrusion.

14 (d) Advice on how to recognize the signs of water damage.

15 (e) Appropriate steps to take when water damage is discovered.

16 (3) The [*board*] **department** shall make the information developed under this section available
17 without charge to contractors that construct new residential structures or zero-lot-line dwellings.

18 **SECTION 105.** ORS 701.345 is amended to read:

19 701.345. (1) A contractor shall maintain a list that includes the names, addresses and license
20 numbers for all subcontractors or other contractors performing work on a project for that contrac-
21 tor.

22 (2) The contractor must deliver the list referred to in subsection (1) of this section to the
23 [*Construction Contractors Board*] **Department of Consumer and Business Services** within 72
24 hours after a [*board*] **department** request made during reasonable working hours.

25 **SECTION 106.** ORS 701.348 is amended to read:

26 701.348. (1) Every person offering to undertake or undertaking construction of building sewer
27 piping shall comply with the requirements of ORS chapter 701.

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

30 (a) The person's [*Construction Contractors Board*] **construction contractor** license number;

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

32 (c) The statement described in ORS 701.325 (1).

33 (3) Any person licensed under ORS 701.026 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 107.** ORS 701.350 is amended to read:

39 701.350. (1) An individual may not undertake, offer to undertake or submit a bid to do work as
40 a home inspector unless the individual is certified as a home inspector under this section by the
41 [*Construction Contractors Board*] **Department of Consumer and Business Services** and is an
42 owner of, or employed by, a business that is licensed by the [*board*] **department**.

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

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

2 (4) The [board] **department** shall require that an applicant for certification as a home inspector
 3 pass a test demonstrating the competency of the applicant to act as a home inspector. The [board]
 4 **department** may adopt rules accepting the results of competency testing by a nationally recognized
 5 certification program for home inspectors. The [board] **department** may adopt rules establishing
 6 additional requirements for the issuance or renewal of a home inspector certificate, including but
 7 not limited to training and continuing education requirements.

8 (5) The [board] **department** shall adopt rules establishing procedures for the issuance, renewal
 9 and revocation of home inspector certification.

10 (6) The [board] **department** may adopt rules establishing fees necessary for the administration
 11 of this section. The fees may not exceed the following:

12 (a) \$50 for application.

13 (b) \$50 for testing.

14 (c) \$150 for issuance of an initial two-year certificate.

15 (d) \$150 for renewal of a two-year certificate.

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

19 **SECTION 108.** ORS 701.505 is amended to read:

20 701.505. For the purposes of ORS 431.920 and 701.500 to 701.515:

21 (1) “Abatement” has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223
 22 (1997) and as further defined pursuant to the authorities described in ORS 701.500.

23 (2) “Accredited training program” means a training program that has been accredited by the
 24 Department of Human Services to provide training for individuals engaged in lead-based paint ac-
 25 tivities.

26 (3) “Certified” means an action by the Department of Human Services verifying the successful
 27 completion of a training program accredited by the department and any other requirements.

28 (4) “Discipline” means a specific type or category of lead-based paint activity.

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

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

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

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

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

41 (10) “Licensed” means a person who has been certified by the Department of Human Services
 42 in one or more disciplines and has completed the requirements of the [*Construction Contractors*
 43 *Board*] **Department of Consumer and Business Services.**

44 (11) “Registered” means a person or business that has met the requirements for registration
 45 under [*this chapter*] **ORS 701.515.**

SECTION 109. ORS 701.515 is amended to read:

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

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

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

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

(2) In accordance with any applicable provisions of ORS chapter 183, the [*Construction Contractors Board*] **department** by rule shall establish a system to register businesses that employ persons or individuals in lead-based paint disciplines required to be licensed under ORS 701.510. Such registration shall include the requirements described in 40 C.F.R. 745.226. Such a system shall include but not be limited to provisions:

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

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

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

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

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

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

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

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

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

SECTION 110. ORS 701.525 is amended to read:

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

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

(b) “Residential housing”:

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

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

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

(2) A developer who enters into a contract to construct or arrange for the construction of new residential housing may, at the time of providing a purchaser with a written contract, also provide the purchaser with a list of features that may make residential housing more accessible to a person with a disability. The list may include the features identified in the model list of features adopted

1 by the [*Construction Contractors Board*] **Department of Consumer and Business Services** by rule
 2 under ORS 701.530.

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

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

13 **SECTION 111.** ORS 701.530 is amended to read:

14 701.530. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
 15 **vices** shall adopt by rule a model list of features recommended for inclusion in a list of features that
 16 a developer supplies to a purchaser of residential housing under ORS 701.525. In developing the
 17 model list of features, the [*board*] **department** shall solicit the comments of advocacy groups and
 18 other organizations serving persons with disabilities.

19 **SECTION 112.** ORS 701.550 is amended to read:

20 701.550. The [*Construction Contractors Board*] **Department of Consumer and Business Ser-**
 21 **vices** shall provide an annual notice to each contractor licensed under this chapter that informs
 22 contractors of the rules developed by the Director of the Department of Consumer and Business
 23 Services pursuant to ORS 455.355 prohibiting the installation of thermostats that contain mercury
 24 and requiring proper disposal of thermostats that contain mercury.

25 **SECTION 113.** ORS 701.565 is amended to read:

26 701.565. (1) An owner may not compel arbitration or commence a court action against a con-
 27 tractor, subcontractor or supplier to assert a claim arising out of or related to any defect in the
 28 construction, alteration or repair of a residence or in any system, component or material incorpo-
 29 rated into a residence located in this state unless the owner has sent that contractor, subcontractor
 30 or supplier a notice of defect as provided in this section and has complied with ORS 701.575.

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

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

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

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

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

42 (d) A description of:

43 (A) Each defect;

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

45 (C) Any incidental damage not curable by remediation as described in subparagraph (B) of this

1 paragraph; and

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

4 **SECTION 114.** ORS 701.630 is amended to read:

5 701.630. (1) Performance by an original contractor, subcontractor or material supplier in ac-
6 cordance with the provisions of a construction contract entitles the original contractor, subcon-
7 tractor or material supplier to payment from the party with whom the original contractor,
8 subcontractor or material supplier contracts.

9 (2) If a subcontractor or material supplier has performed in accordance with the provisions of
10 a construction contract, the original contractor shall pay to the subcontractor or material supplier,
11 and each subcontractor shall pay to its subcontractors or material suppliers, the full amount re-
12 ceived for such subcontractor's work and for materials and products supplied based on the subcon-
13 tract or purchase order terms and conditions within seven days of receipt by the original contractor
14 or subcontractor of a progress payment or final payment. Payment is not required under this sub-
15 section unless a subcontractor or material supplier provides to the original contractor or subcon-
16 tractor a billing or invoice for the work performed or materials or products supplied in compliance
17 with the terms of the contract between the parties. Each subcontractor or material supplier must
18 provide an appropriate waiver of any mechanic's or materialman's lien in accordance with subcon-
19 tract or purchase order terms and conditions. The original contractor or subcontractor may require
20 that such waivers of lien be notarized.

21 (3) Any failure to reasonably account for the application or use of payments, as proven in a legal
22 proceeding authorized under the terms of the construction contract, may constitute grounds for
23 disciplinary action by the [*Construction Contractors Board*] **Department of Consumer and Busi-**
24 **ness Services** under ORS 701.098.

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

29 (a) Unsatisfactory work progress;

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

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

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

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

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

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

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

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

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

42 (5) If a progress or final payment to a subcontractor or material supplier is delayed by more
43 than seven days after receipt of a progress or final payment by an original contractor or subcon-
44 tractor, the original contractor or subcontractor shall pay its subcontractor or material supplier
45 interest beginning on the eighth day, except during periods of time during which payment is with-

1 held pursuant to subsection (4) of this section, at the rate of one and one-half percent a month or
 2 a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

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

5 **SECTION 115.** ORS 701.992 is amended to read:

6 701.992. (1) Except as provided in subsections (4) and (5) of this section, any person who violates
 7 any provision of this chapter or any rule adopted by the [*Construction Contractors Board*] **Depart-**
 8 **ment of Consumer and Business Services** shall forfeit and pay into the General Fund of the State
 9 Treasury a civil penalty in an amount determined by the [*board*] **department** of not more than
 10 \$5,000 for each offense.

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

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

14 (4) The [*board*] **department** shall impose sanctions for violation of ORS 701.098 (1)(g) on both
 15 the person to whom the contract is awarded and the person who awards the contract as follows:

- 16 (a) A penalty not less than \$500 nor more than \$1,000 for the first offense;
- 17 (b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;
- 18 (c) Suspension of the person's license for six months for a third offense;
- 19 (d) Suspension of the person's license for three years for a fourth offense; and
- 20 (e) Revocation of the person's license for a fifth offense.

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

23 **SECTION 116.** ORS 701.992, as amended by section 38, chapter 836, Oregon Laws 2007, is
 24 amended to read:

25 701.992. (1) Except as provided in subsections (4) and (5) of this section, any person who violates
 26 any provision of this chapter or any rule adopted by the [*Construction Contractors Board*] **Depart-**
 27 **ment of Consumer and Business Services** shall forfeit and pay into the General Fund of the State
 28 Treasury a civil penalty in an amount determined by the [*board*] **department** of not more than
 29 \$5,000 for each offense.

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

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

33 (4) The [*board*] **department** shall impose sanctions for violation of ORS 701.098 (1)(h) on both
 34 the person to whom the contract is awarded and the person who awards the contract as follows:

- 35 (a) A penalty not less than \$500 nor more than \$1,000 for the first offense;
- 36 (b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;
- 37 (c) Suspension of the person's license for six months for a third offense;
- 38 (d) Suspension of the person's license for three years for a fourth offense; and
- 39 (e) Revocation of the person's license for a fifth offense.

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

42 **SECTION 117.** (1) **Sections 1 to 7 of this 2009 Act and the amendments to Oregon Revised**
 43 **Statutes by sections 8 to 116 of this 2009 Act do not terminate any Construction Contractors**
 44 **Board order or finding in effect on the effective date of this 2009 Act. Any such order or**
 45 **finding shall continue in full force and effect as an order or finding of the Department of**

1 **Consumer and Business Services.**

2 (2) The amendments to ORS 701.205 by section 86 of this 2009 Act do not terminate or
3 shorten any term of office being served by a member of the Construction Contractors Board
4 on the effective date of this 2009 Act.

5 (3) The amendments to ORS 279C.585, 479.940, 671.540, 701.021, 701.035, 701.063, 701.098,
6 701.124, 701.131, 701.230, 701.325 and 701.992 by sections 23, 35, 41, 45, 49, 54, 60, 68, 72, 91, 102
7 and 116 of this 2009 Act become operative July 1, 2010.

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