

B-Engrossed
Senate Bill 147

Ordered by the House May 28
Including Senate Amendments dated March 11 and House Amendments
dated May 28

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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.

Changes definitions for landscape construction professional and landscape contracting business. Makes persons exempted from other landscaping laws subject to prohibitions against misleading or false advertising or other representations regarding licensure status. Exempts plumbing contractors and journeyman plumbers from certain landscaping laws and requirement to obtain construction contractor license when performing certain types of work on irrigation systems. **Removes exemption from landscape architect statutes for landscaping work exempted from landscape contractor statutes.**

A BILL FOR AN ACT

1
2 Relating to landscaping; amending ORS 671.321, 671.520, 671.540, 671.571 and 701.010.

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

4 **SECTION 1.** ORS 671.520 is amended to read:

5 671.520. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

6 (1) "Landscape construction professional" means an individual who for compensation or with the
7 intent to be compensated performs or supervises activities requiring the art, ability, experience,
8 knowledge, science and skill to:

9 (a) Plan or install lawns, shrubs, vines, trees or nursery stock;

10 (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;

11 (c) Construct or repair ornamental water features, drainage systems or irrigation systems; *[or]*

12 **(d) Maintain irrigation systems with the use of compressed air; or**

13 *[(d)]* (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or
14 retaining walls.

15 (2) "Landscape contracting business" means a business that for compensation or with the intent
16 to be compensated arranges, *[for or]* submits a bid, or otherwise offers or contracts, *[to provide the*
17 *services of a landscape construction professional]* **for the performance of activities described in**
18 **subsection (1) of this section.**

19 (3) "Licensee" means a person that is licensed under ORS 671.510 to 671.760 as a landscape
20 construction professional or landscape contracting business.

21 (4) "Nursery stock" means nursery stock:

22 (a) As defined by ORS 571.005 other than stock grown for commercial resale or reforestation;

23 or

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 (b) As defined by the State Landscape Contractors Board by rule.

2 (5) "Ornamental water features" means fountains, ponds, waterfalls, man-made streams and other
3 decorative water-related constructions as identified by the board by rule.

4 **SECTION 2.** ORS 671.540 is amended to read:

5 671.540. (1) **Except as provided in subsection (2) of this section,** ORS 671.510 to 671.760 and
6 671.990 (2) do not apply to:

7 [(1)] (a) Any federal or state agency or any political subdivision performing landscaping work
8 on public property.

9 [(2)] (b) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as
10 provided under ORS 671.310 to 671.459.

11 [(3)] (c) Landscaping work performed by a landscape maintenance business if:

12 [(a)] (A) The landscaping work is performed for a customer that in a calendar year receives
13 primarily landscape maintenance services from the business;

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

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

18 [(4)] (d) Installation of fences, decks, arbors, driveways, walkways or retaining walls if per-
19 formed by a person or business licensed with the Construction Contractors Board.

20 [(5)] (e) Rough grading of plots and areas of land performed in conjunction with new or remod-
21 eling construction if performed by a person or business licensed with the Construction Contractors
22 Board.

23 [(6)] (f) Any owner of property, **or employee of an owner of property,** who contracts for
24 landscaping work **on the property** to be performed by a person licensed under ORS 671.560. The
25 exception provided by this [subsection] **paragraph** does not apply to a person who, in pursuit of an
26 independent business, performs or contracts for the performance of landscaping work with the intent
27 of offering for sale before, upon or after completion of the landscaping work the property upon
28 which the landscaping work is performed.

29 [(7)] (g) Any landscaping work performed by a person on property that the person owns or in
30 which the person has a legal interest. The exception provided by this [subsection] **paragraph** does
31 not apply to a person who, in pursuit of an independent business, performs or contracts for the
32 performance of landscaping work with the intent of offering for sale before, upon or after completion
33 of the landscaping work the property on which the landscaping work is performed.

34 [(8)] (h) A general contractor licensed under ORS chapter 701 who performs landscaping work
35 if the total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping
36 work is performed on residential property for which the contractor is under contract for the con-
37 struction of a new dwelling. The exception provided by this [subsection] **paragraph** does not apply
38 to the performance of irrigation work by a general contractor. The State Landscape Contractors
39 Board shall revise the amount specified in this [subsection] **paragraph** every five years, beginning
40 in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Con-
41 sumers for All Items as published by the Bureau of Labor Statistics of the United States Department
42 of Labor.

43 [(9)] (i) A general contractor licensed under ORS chapter 701 who performs landscaping work
44 on residential property that is directly related to local building code requirements or occupancy
45 ordinances including, but not limited to, the placement of street trees. The exception provided by

1 this [subsection] **paragraph** does not apply to the performance of irrigation work by a general con-
2 tractor.

3 [(10)] **(j)** A person engaged in making plans or drawings for the selection, placement or use of
4 plants or other site features, unless the plans or drawings are for the purpose of providing con-
5 struction details and specifications.

6 [(11)] **(k)** Use by a person other than a landscape construction professional of the title “land-
7 scape designer” when engaged in making plans or drawings described in [subsection (10) of this sec-
8 tion] **paragraph (j) of this subsection.**

9 [(12)] **(L)** A person providing recommendations or written specifications for soil amendments or
10 planting media if the recommendations or specifications are solely for the purpose of plant installa-
11 tion.

12 [(13)] *A person registered under ORS 447.010 to 447.156 when performing repair and maintenance*
13 *on piping for irrigation systems.]*

14 **(m)** A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in
15 superintending installation work on piping for an irrigation system designed by a landscape
16 contracting business or by a person registered under ORS 671.310 to 671.459.

17 **(n)** A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in super-
18 intending repair or maintenance work on piping for an irrigation system.

19 **(o)** A journeyman plumber licensed under ORS chapter 693 when performing an installa-
20 tion for a plumbing contractor described in paragraph (m) of this subsection or performing
21 repair or maintenance work on piping for an irrigation system.

22 [(14)] **(p)** An employee, as defined in ORS 657.015, of a general contractor licensed under ORS
23 chapter 701 when performing work that the contractor may perform under [subsection (8) or (9) of
24 this section] **paragraph (h) or (i) of this subsection.**

25 [(15)] **(q)** An employee of a licensed landscape contracting business when performing work for
26 the business under the direct supervision of a licensed landscape construction professional.

27 [(16)] **(r)** An employee of a worker leasing company or temporary service provider, both as de-
28 fined in ORS 656.850, when performing work for a licensed landscape contracting business under the
29 direct supervision of a licensed landscape construction professional.

30 **(2) ORS 671.530 (2), (4) and (5) apply to a person described under subsection (1) of this**
31 **section.**

32 **SECTION 3.** ORS 671.540, as amended by section 50, chapter 836, Oregon Laws 2007, is
33 amended to read:

34 671.540. **(1) Except as provided in subsection (2) of this section,** ORS 671.510 to 671.760 and
35 671.990 (2) do not apply to:

36 [(1)] **(a)** Any federal or state agency or any political subdivision performing landscaping work
37 on public property.

38 [(2)] **(b)** Any landscape architect registered under ORS 671.310 to 671.459 and practicing as
39 provided under ORS 671.310 to 671.459.

40 [(3)] **(c)** Landscaping work performed by a landscape maintenance business if:

41 [(a)] **(A)** The landscaping work is performed for a customer that in a calendar year receives
42 primarily landscape maintenance services from the business;

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

45 [(c)] **(C)** The landscaping work is of a casual, minor or inconsequential nature, as those terms

1 are defined by the State Landscape Contractors Board by rule.

2 [(4)] (d) Installation of fences, decks, arbors, driveways, walkways or retaining walls if per-
3 formed by a person or business licensed with the Construction Contractors Board.

4 [(5)] (e) Rough grading of plots and areas of land performed in conjunction with new or remodel-
5 ing construction if performed by a person or business licensed with the Construction Contractors
6 Board.

7 [(6)] (f) Any owner of property, **or employee of an owner of property**, who contracts for
8 landscaping work **on the property** to be performed by a person licensed under ORS 671.560. The
9 exception provided by this [subsection] **paragraph** does not apply to a person who, in pursuit of an
10 independent business, performs or contracts for the performance of landscaping work with the intent
11 of offering for sale before, upon or after completion of the landscaping work the property upon
12 which the landscaping work is performed.

13 [(7)] (g) Any landscaping work performed by a person on property that the person owns or in
14 which the person has a legal interest. The exception provided by this [subsection] **paragraph** does
15 not apply to a person who, in pursuit of an independent business, performs or contracts for the
16 performance of landscaping work with the intent of offering for sale before, upon or after completion
17 of the landscaping work the property on which the landscaping work is performed.

18 [(8)] (h) A residential general contractor licensed under ORS chapter 701 who performs landscap-
19 ing work if the total value of the landscaping is less than \$2,500 per residential dwelling and
20 the landscaping work is performed on residential property for which the contractor is under con-
21 tract for the construction of a new dwelling. The exception provided by this [subsection] **paragraph**
22 does not apply to the performance of irrigation work by a residential general contractor. The State
23 Landscape Contractors Board shall revise the amount specified in this [subsection] **paragraph** every
24 five years, beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index
25 for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United
26 States Department of Labor.

27 [(9)] (i) A residential general contractor licensed under ORS chapter 701 who performs landscap-
28 ing work on residential property that is directly related to local building code requirements or
29 occupancy ordinances including, but not limited to, the placement of street trees. The exception
30 provided by this [subsection] **paragraph** does not apply to the performance of irrigation work by a
31 **residential** general contractor.

32 [(10)] (j) A person engaged in making plans or drawings for the selection, placement or use of
33 plants or other site features, unless the plans or drawings are for the purpose of providing con-
34 struction details and specifications.

35 [(11)] (k) Use by a person other than a landscape construction professional of the title "land-
36 scape designer" when engaged in making plans or drawings described in [subsection (10) of this sec-
37 tion] **paragraph (j) of this subsection**.

38 [(12)] (L) A person providing recommendations or written specifications for soil amendments or
39 planting media if the recommendations or specifications are solely for the purpose of plant installa-
40 tion.

41 [(13) A person registered under ORS 447.010 to 447.156 when performing repair and maintenance
42 on piping for irrigation systems.]

43 (m) **A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in**
44 **superintending installation work on piping for an irrigation system designed by a landscape**
45 **contracting business or by a person registered under ORS 671.310 to 671.459.**

1 **(n) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in super-**
2 **intending repair or maintenance work on piping for an irrigation system.**

3 **(o) A journeyman plumber licensed under ORS chapter 693 when performing an installa-**
4 **tion for a plumbing contractor described in paragraph (m) of this subsection or performing**
5 **repair or maintenance work on piping for an irrigation system.**

6 [(14)] **(p)** An employee, as defined in ORS 657.015, of a residential general contractor licensed
7 under ORS chapter 701 when performing work that the contractor may perform under [subsection (8)
8 or (9) of this section] **paragraph (h) or (i) of this subsection.**

9 [(15)] **(q)** An employee of a licensed landscape contracting business when performing work for
10 the business under the direct supervision of a licensed landscape construction professional.

11 [(16)] **(r)** An employee of a worker leasing company or temporary service provider, both as de-
12 fined in ORS 656.850, when performing work for a licensed landscape contracting business under the
13 direct supervision of a licensed landscape construction professional.

14 **(2) ORS 671.530 (2), (4) and (5) apply to a person described under subsection (1) of this**
15 **section.**

16 **SECTION 4.** ORS 671.571 is amended to read:

17 671.571. (1) Notwithstanding ORS 671.570, the State Landscape Contractors Board may issue a
18 probationary landscape construction professional license to a person who does not meet the training
19 and experience qualifications set forth in ORS 671.570. To obtain a probationary landscape con-
20 struction professional license, the person must:

21 (a) Pay a nonrefundable application fee;

22 (b) Pay an examination fee;

23 (c) Pay to the board the landscape construction professional license fee required by ORS 671.650;
24 and

25 (d) Pass all sections of the examination described in ORS 671.570 within 12 months after first
26 taking the examination.

27 (2) Two or more years after receiving a probationary landscape construction professional li-
28 cense, a probationary landscape construction professional may obtain removal from probationary
29 status and issuance of a landscape construction professional license if the probationary landscape
30 construction professional presents the board with proof that the probationary landscape con-
31 struction professional has done any of the following:

32 (a) Completed at least 24 months of employment with a licensed landscape contracting business
33 under the direct supervision of a landscape construction professional.

34 (b) Provided supervision described in ORS 671.540 [(15)] **(1)(q)** or 671.565 (1)(b) for at least 24
35 months as the owner or employee of a licensed landscape contracting business that, during that
36 period:

37 (A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of
38 \$15,000; and

39 (B) Performed landscaping work only on landscaping projects where the amount charged by the
40 landscape contracting business for work on the project during any 12-month period did not exceed
41 \$15,000.

42 (c) Actively operated for at least 24 months as a construction contractor licensed under ORS
43 chapter 701.

44 (3) Except as provided in this section and ORS 671.560 and as the board may provide by rule,
45 a probationary landscape construction professional licensed under this section is for all purposes a

1 landscape construction professional licensed under ORS 671.560.

2 **SECTION 5.** ORS 701.010 is amended to read:

3 701.010. The Construction Contractors Board may adopt rules to make licensure optional for
4 persons who offer, bid or undertake to perform work peripheral to construction, as defined by ad-
5 ministrative rule of the board. The following persons are exempt from licensure under this chapter:

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

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

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

11 (4) A person working on one structure or project, under one or more contracts, when the ag-
12 gregate price of all of that person's contracts for labor, materials and all other items is less than
13 \$500 and such work is of a casual, minor or inconsequential nature. This subsection does not apply
14 to a person who advertises or puts out any sign or card or other device that might indicate to the
15 public that the person is a contractor.

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

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

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

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

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

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

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

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

41 (e) A landscape contracting business licensed under ORS 671.510 to 671.760 [*that constructs*
42 *fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and that meets*
43 *the applicable bonding requirements under ORS 671.690*].

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

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

3 **(9) A landscape contracting business operating within the scope of a license issued under**
4 **ORS 671.510 to 671.760 that:**

5 **(a) Constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or**
6 **retaining walls and meets the applicable bonding requirements under ORS 671.690; or**

7 **(b) Subcontracts to a licensed plumbing contractor, or otherwise arranges for a licensed**
8 **plumbing contractor to perform, the installation of an irrigation system described in ORS**
9 **671.540 (1)(m) or the repair or maintenance of an irrigation system.**

10 [(9)] (10) A person who performs work subject to this chapter as an employee of a contractor.

11 [(10)] (11) A manufacturer of a manufactured home constructed under standards established by
12 the federal government.

13 [(11)] (12) A person involved in the movement of:

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

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

18 [(12)] (13) A commercial lending institution or surety company that arranges for the completion,
19 repair or remodeling of a structure. As used in this subsection, “commercial lending institution”
20 means any bank, mortgage banking company, trust company, savings bank, savings and loan asso-
21 ciation, credit union, national banking association, federal savings and loan association, insurance
22 company or federal credit union maintaining an office in this state.

23 [(13)] (14) A real estate licensee as defined in ORS 696.010 or the employee of that licensee when
24 performing work on a structure that the real estate licensee manages under a contract.

25 [(14)] (15) Units of government other than those specified in ORS 701.005 (5)(c) and (d).

26 [(15)] (16) A qualified intermediary in a property exchange that qualifies under section 1031 of
27 the Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary
28 is not performing construction activities.

29 [(16)] (17) A business that supplies personnel to a licensed contractor for the performance of
30 work under the direction and supervision of the contractor.

31 [(17)] (18) City or county inspectors acting under ORS 701.225 or inspectors described in ORS
32 455.715.

33 **SECTION 6.** ORS 671.321 is amended to read:

34 671.321. (1) ORS 671.310 to 671.459, 671.992 and 671.995 do not restrict or otherwise affect the
35 right of any person to:

36 (a) Practice architecture under ORS 671.010 to 671.220;

37 (b) Practice engineering under ORS 672.002 to 672.325;

38 (c) Engage in the occupation of growing and marketing nursery stock, or use the title
39 “nurseryman” or “landscape nurseryman”;

40 (d) Operate as a landscape construction professional or landscape contracting business under
41 ORS 671.510 to 671.760 or use the title “landscape construction professional” or “landscape con-
42 tractor”;

43 [(e) Perform work described under ORS 671.540;]

44 [(f)] (e) Engage in making plans or drawings for the selection, placement or use of plants or
45 other site features unless the plans or drawings are for the purpose of providing construction details

1 and specifications not otherwise exempted;

2 [(g)] (f) Use the title “landscape designer” in connection with activities described under para-
3 graph [(f)] (e) of this subsection;

4 [(h)] (g) Make any plans, drawings or specifications for property owned by that person; or

5 [(i)] (h) Provide recommendations or written specifications for soil amendments or planting me-
6 diums if the recommendations or specifications are solely for purposes of plant installation and do
7 not significantly alter the stability of the soil profile or surface drainage patterns.

8 (2) The scope of services described in ORS 671.310 (5) and (6) does not preclude a registered
9 landscape architect from:

10 (a) Planning the development of land areas and elements used on land areas; or

11 (b) Performing services described in ORS 671.310 (5) and (6) in connection with the settings,
12 approaches or environment for buildings, structures or facilities in accordance with legally estab-
13 lished standards for public health, safety and welfare.

14 (3) ORS 671.310 to 671.459, 671.992 and 671.995 do not apply to:

15 (a) The preparation of detailed or shop drawings that a construction contractor is required to
16 furnish or the administration of construction contracts by a person customarily engaged in con-
17 tracting work.

18 (b) The preparation of technical submissions or the administration of construction contracts by
19 employees of a landscape architect or a landscape architecture business when acting under the di-
20 rect supervision of a registered landscape architect.

21 (c) Employees of the federal government acting within the scope of that employment.

22