

House Bill 2158

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for State Landscape Contractors Board)

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**.

Requires applicant for initial landscape contracting business license to have owner or managing employee trained and examined on subjects of landscape contracting business practices and related Oregon laws as required by State Landscape Contractors Board rule.

A BILL FOR AN ACT

1
2 Relating to landscape contracting business license qualifications; creating new provisions; and
3 amending ORS 671.520, 671.560, 671.565, 671.570, 671.595, 671.614, 671.660 and 671.676.

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

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

6 671.520. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

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

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

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

12 (c) Construct or repair ornamental water features, drainage systems or irrigation systems;

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

14 (e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or re-
15 taining walls.

16 (2) "Landscape contracting business" means a business that for compensation or with the intent
17 to be compensated arranges, submits a bid, or otherwise offers or contracts, for the performance of
18 activities described in 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) **"Managing employee" means a person who, at the time of an application for the is-
22 suance or renewal of a landscape contracting business license:**

23 (a) **Is employed in landscaping work only by the applicant; and**

24 (b) **Manages or shares in the management of the applicant, as defined by the State
25 Landscape Contractors Board by rule.**

26 [(4)] (5) "Nursery stock" means nursery stock:

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

28 or

29 (b) As defined by the [*State Landscape Contractors*] board by rule.

30 [(5)] (6) "Ornamental water features" means fountains, ponds, waterfalls, man-made streams and

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 other decorative water-related constructions as identified by the board by rule.

2 **SECTION 2.** ORS 671.560 is amended to read:

3 671.560. (1) Except as provided in ORS 671.571 and 671.590, the State Landscape Contractors
4 Board shall issue a landscape construction professional license to an applicant who satisfies the
5 requirements of ORS 671.570.

6 (2) The board shall issue a landscape contracting business license to an applicant who **complies**
7 **with ORS 671.595 and** satisfies the requirements of the board.

8 (3) An applicant for a license under this section shall apply to the board upon a form furnished
9 by the board and give such information as the board considers necessary.

10 (4)(a) The board may issue a limited or specialty license if the applicant is required to have a
11 landscape construction professional license or landscape contracting business license but is not
12 qualified or required to be licensed for all phases of landscape work.

13 (b) The board may adopt rules to limit or restrict the landscape work performed by probationary
14 landscape construction professionals.

15 (5) A landscape contracting business that qualifies for the exemption described in ORS 571.045
16 shall indicate on its license application or license renewal application under this section the reasons
17 the business qualifies for the exemption.

18 **SECTION 3.** ORS 671.565 is amended to read:

19 671.565. (1) Each person applying for a landscape contracting business license must:

20 (a) Pay to the State Landscape Contractors Board the applicable landscape contracting business
21 license fee established by the board under ORS 671.650.

22 (b) Have a landscape construction professional license or employ at least one person with a
23 landscape construction professional license to supervise the landscaping operation of the business.

24 *[(c) Submit the names of all employees who are licensed landscape construction professionals.]*

25 **(c) Submit the names of all owners and managing employees of the business and of all**
26 **employees of the business who are licensed landscape professionals. If the applicant is sub-**
27 **ject to ORS 671.595, the application must identify an owner or managing employee who has**
28 **obtained the training described in ORS 671.595.**

29 (d) File with the board a form of security acceptable under ORS 671.690.

30 (e) File with the board a certificate of public liability, personal injury and property damage in-
31 surance covering the work of the landscape contracting business that is subject to ORS 671.510 to
32 671.760 for an amount not less than \$100,000.

33 (f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an in-
34 dependent contractor.

35 (2) At the time of application for a license, for renewal of a license in active status or for return
36 of a license to active status, the landscape contracting business shall provide evidence satisfactory
37 to the board that the public liability, personal injury and property damage insurance required by
38 subsection (1)(e) of this section is in effect. During a license period, the landscape contracting
39 business shall provide, to the extent required by the board, satisfactory evidence of continued public
40 liability, personal injury and property damage insurance coverage.

41 **SECTION 4.** ORS 671.570 is amended to read:

42 671.570. (1) Each person applying for a landscape construction professional license must:

43 (a) Pay a nonrefundable application fee.

44 (b) Pay an examination fee.

45 (c) Pay to the State Landscape Contractors Board the landscape construction professional li-

1 cense fee required by ORS 671.650.

2 (d) Pass an examination, which the board shall offer at least once each six months, to determine
3 the fitness of the applicant for licensing and within 10 years before the day the application for a
4 license is made:

5 (A) Have at least 24 months of employment with a landscape contracting business; or

6 (B) Have at least 12 months of employment with a landscape contracting business and one full
7 year of training in an area related to landscaping at an accredited school or college.

8 (e) Be employed by, or own, a landscape contracting business if performing landscaping work.

9 (2) Notwithstanding subsection (1) of this section, the board may adopt rules:

10 (a) Allowing a person who does not meet the education and experience requirements in sub-
11 section (1)(d) of this section to substitute other education and experience that demonstrate the fit-
12 ness of the person for licensing as a landscape construction professional.

13 **(b) Approving alternative certification programs as a substitute for the examination de-**
14 **scribed in subsection (1)(d) of this section.**

15 **SECTION 5.** ORS 671.595 is amended to read:

16 671.595. *[(1) As used in this section:]*

17 *[(a) "Managing employee" means a person who, at the time of an application for the issuance or*
18 *renewal of a landscape contracting business license:]*

19 *[(A) Is employed in landscaping work only by the applicant; and]*

20 *[(B) Manages or shares in the management of the applicant, as defined by the State Landscape*
21 *Contractors Board by rule.]*

22 *[(b)] (1) As used in this section, "owner" means a person who at the time of an application for*
23 *the issuance or renewal of a landscape contracting business license:*

24 (a) Has an ownership interest in the applicant; and

25 (b) Manages or shares in the management of the applicant, as defined by the **State Landscape**
26 **Contractors Board** by rule.

27 *[(2) If an applicant for a landscape contracting business license does not have at least one owner*
28 *or managing employee who is licensed as a landscape construction professional under ORS 671.560, the*
29 *applicant shall provide the board with proof that an owner or managing employee has completed re-*
30 *quired courses described in subsection (4) of this section and passed an examination on the subject of*
31 *those courses.]*

32 **(2) An applicant for the original license of a landscape contracting business shall provide**
33 **the board with proof that at least one owner or managing employee for the business has**
34 **received training and been examined on the subjects of landscape contracting business**
35 **practices and Oregon laws affecting landscape contracting businesses. The board shall adopt**
36 **rules establishing standards for the owner or managing employee training and examination**
37 **that the applicant must prove under this subsection. The board may not establish a standard**
38 **that requires an owner or managing employee to take a total of more than 16 hours of course**
39 **work in landscape contracting business or general business practices and Oregon laws af-**
40 **fecting landscape contracting businesses. The board shall adopt rules to provide for the ex-**
41 **amination of owners or managing employees who meet the training requirements established**
42 **by the board.**

43 (3) The board may adopt rules to require a landscape contracting business and any owner or
44 managing employee to provide the board with notice of any change in the employment or duties of
45 the owner or managing employee.

1 [(4) *The board shall adopt rules establishing required courses for an owner or managing employee*
 2 *who seeks to qualify the business for a landscape contracting business license, but who is not licensed*
 3 *as a landscape construction professional. The courses required by the board shall be designed to edu-*
 4 *cate the owner or managing employee regarding business practices and Oregon laws affecting land-*
 5 *scape contracting businesses. The board may not require an owner or managing employee to take a*
 6 *total of more than 16 hours of instruction.*]

7 [(5)] (4) [When adopting rules to carry out subsection (4) of this section,] **If the board proposes**
 8 **the adoption of a rule under subsection (2) of this section that requires or allows an owner**
 9 **or managing employee to obtain training by taking a course**, the board shall consider the
 10 availability of courses in the regions of this state. The board shall encourage course providers to
 11 use the most up-to-date technology to make courses widely available.

12 [(6)] (5) A course provider may submit information regarding course materials, examinations and
 13 instructor qualifications to the board for approval. The board shall approve courses if the course
 14 materials, examinations and instructors meet board requirements **for training in landscape con-**
 15 **tracting business practices and Oregon laws affecting landscape contracting businesses.** The
 16 board shall periodically review approved courses to ensure continuing compliance with board re-
 17 quirements. The board shall develop and make available a list of **any approved** providers that offer
 18 courses that will enable an owner or managing employee to [*comply with the requirements of sub-*
 19 *section (2) of this section*] **qualify the landscape contracting business for licensing.**

20 **SECTION 6.** ORS 671.614 is amended to read:

21 671.614. [(1) *The State Landscape Contractors Board may issue an order placing a landscape*
 22 *contracting business, or any landscape construction professional that is employed by the landscape*
 23 *contracting business or is a landscape contracting business owner or officer as defined in ORS 671.607,*
 24 *on probation if three or more claims are filed against the landscape contracting business's bond, letter*
 25 *of credit or deposit within a 12-month period.*]

26 (1) **If three or more claims are filed against the bond, letter of credit or deposit of a**
 27 **landscape contracting business within a 12-month period, the State Landscape Contractors**
 28 **Board may issue orders to place one or more of the following on probation:**

29 (a) **The landscape contracting business;**

30 (b) **Any employee of the business who is a licensed landscape construction professional;**

31 (c) **An owner of the business; or**

32 (d) **A managing employee.**

33 (2) The board may place a landscape contracting business or landscape construction professional
 34 on probation under **subsection (1) of this section** only if the board determines after investigation
 35 of the complaints that a significant likelihood exists that continued activity by the landscape con-
 36 tracting business or landscape construction professional without board supervision will result in
 37 additional claims against the landscape contracting business.

38 (3) **The board may place an owner or managing employee of a landscape contracting**
 39 **business on probation if the owner or managing employee qualifies the business under ORS**
 40 **671.595 and fails to substantially participate in the business as determined by board rule.**

41 [(3)] (4) The board may require as a condition of probation imposed under this section that
 42 [*the*] **a landscape construction professional take a board-approved education course in one or more**
 43 **subjects relating to landscape operations.**

44 [(4)] (5) The board may require as a condition of probation imposed under this section that the
 45 owner or [*officer*] **managing employee** of the landscape contracting business take a board-approved

1 education course in one or more subjects relating to landscape contracting business or general
 2 business practices.

3 [(5)] (6) The board may take action to suspend, revoke or refuse to renew the license of the
 4 landscape contracting business, [or] landscape construction professional, **owner or managing em-**
 5 **ployee** if the business, [or] professional, **owner or managing employee** fails to fulfill the conditions
 6 of the probation.

7 **SECTION 7.** ORS 671.660 is amended to read:

8 671.660. (1) The fee for renewal of a license issued under ORS 671.510 to 671.760 shall be paid
 9 annually on or before the last day of the month of the anniversary of issuance.

10 (2) The State Landscape Contractors Board may not issue a new license to a person who has
 11 been previously licensed under ORS 671.510 to 671.760 and whose license has expired, unless the
 12 person makes written application on a form approved by the board and pays the required annual fee.
 13 The board may require the person to also pay a penalty fee.

14 (3) If a license lapses for two years or more, the person must reapply as for initial issuance of
 15 the license.

16 (4) When a landscape contracting business renews its license, the business must:

17 (a) Submit the names of all employees who are licensed landscape construction professionals[.];

18 (b) **Submit the names of all owners and managing employees of the business;**

19 (c) **Demonstrate that an owner or managing employee has complied with any continuing**
 20 **education requirement adopted by the board; and**

21 (d) **Provide any other information required by the board by rule.**

22 (5) When a person renews a landscape construction professional license, the person must:

23 (a) Submit the name of the employer if the person is currently performing landscaping work; and

24 (b) Demonstrate that the person has complied with the continuing education requirement
 25 adopted by the board.

26 **SECTION 8.** ORS 671.676 is amended to read:

27 671.676. (1) The State Landscape Contractors Board shall adopt rules establishing continuing
 28 education requirements for landscape construction professionals **and for landscape contracting**
 29 **business owners and managing employees. Except as provided in this subsection,** the board
 30 may not require landscape construction professionals to take more than [10] **six** hours of continuing
 31 education every year[.] **or require landscape contracting business owners or managing em-**
 32 **ployees to take more than four hours of continuing education every year. If a landscape**
 33 **construction professional is also an owner or managing employee of a landscape contracting**
 34 **business, the board may not require the landscape construction professional to take more**
 35 **than 10 hours of continuing education every year.**

36 (2) The board may approve programs for purposes of continuing education for landscape con-
 37 struction professionals and **for landscape contracting business owners and managing employ-**
 38 **ees. The board may** determine the number of hours to be credited to the programs. The board shall
 39 ensure that continuing education opportunities for landscape construction professionals, **owners**
 40 **and managing employees** are readily available.

41 (3) Programs approved by the board for continuing education purposes must be designed to di-
 42 rectly contribute to the professional competency of landscape construction professionals **or of**
 43 **owners or managing employees.** Approved programs may include, but need not be limited to:

44 (a) Professional development programs and technical meetings of professional associations for
 45 landscape contracting businesses or for related industries such as pesticide application or irrigation

1 auditing;

2 (b) University or college courses related to landscaping or horticulture;

3 (c) Professional staff training programs by associations of landscape construction professionals;

4 and

5 (d) Online or other forms of educational programs.

6 (4) The board may adopt rules establishing grounds for obtaining a waiver of [*the*] continuing
7 education requirements [*for landscape construction professionals*]. The board may not allow a waiver
8 for more than two consecutive years except for a waiver due to military service, retirement, disa-
9 bility, absence from the state, inactive status or extreme hardship.

10 **SECTION 9. (1) The amendments to ORS 671.560 and 671.595 by sections 2 and 5 of this**
11 **2011 Act apply to applications for the initial issuance of a landscape contracting business li-**
12 **cence that are received by the State Landscape Contractors Board on or after the effective**
13 **date of this 2011 Act.**

14 (2) The amendments to ORS 671.565 and 671.660 by sections 3 and 7 of this 2011 Act apply
15 to applications for licensing that are received by the board on or after the effective date of
16 this 2011 Act.

17
