

House Bill 2359

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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 **as introduced**.

Exempts landscape contracting business that subcontracts landscape project site feature construction to licensed construction contractor from construction contractor license requirement. Imposes special bonding and insurance qualifications on landscape contracting business claiming exemption regarding subcontracting of site feature construction work to construction contractor. Prohibits landscape contracting business from entering into contract for unlicensed subcontractor, contractor or landscape contracting business to perform landscaping work.

Exempts construction contractor subcontracting performance of construction project landscaping to licensed landscape contracting business from landscape contracting business license requirement. Prohibits construction contractor from entering into contract for unlicensed subcontractor, contractor or landscape contracting business to perform construction work.

A BILL FOR AN ACT

1
2 Relating to authorizations for engaging in occupations; creating new provisions; and amending ORS
3 671.540, 671.571, 701.010, 701.026 and 701.348.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 671.510 to**
6 **671.760.**

7 **SECTION 2. A landscape contracting business may not enter into a contract for any**
8 **subcontractor, contractor or other landscape contracting business to perform landscaping**
9 **work unless:**

10 (1) **The performing subcontractor, contractor or business holds a license under ORS**
11 **671.510 to 671.760 or ORS chapter 701, and any necessary endorsement, that authorizes the**
12 **subcontractor, contractor or business to perform the work; or**

13 (2) **The performing subcontractor, contractor or business is exempt from licensure under**
14 **ORS 671.540 or 701.010.**

15 **SECTION 3. ORS 671.540 is amended to read:**

16 671.540. (1) Except as provided in subsection (2) of this section, ORS 671.510 to 671.760 and
17 671.990 (2) do not apply to:

18 (a) Any federal or state agency or any political subdivision performing landscaping work on
19 public property.

20 (b) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as provided
21 under ORS 671.310 to 671.459.

22 (c) Landscaping work performed by a landscape maintenance business if:

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

25 (B) The value of all labor, materials or other items supplied for landscaping work at a job site
26 does not exceed \$500 in a calendar year; 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 (C) The landscaping work is of a casual, minor or inconsequential nature, as those terms are
 2 defined by the State Landscape Contractors Board by rule.

3 (d) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by
 4 a person or business licensed **as a contractor** with the Construction Contractors Board.

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

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

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

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

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

31 **(j) A commercial general contractor or residential general contractor licensed under ORS**
 32 **chapter 701 who subcontracts to a landscape contracting business the performance of land-**
 33 **scaping work on construction projects of the general contractor. This paragraph does not**
 34 **allow a general contractor to advertise or represent that the general contractor is licensed**
 35 **to provide landscape contracting business services.**

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

39 [(k)] (L) Use by a person other than a landscape construction professional of the title "landscape
 40 designer" when engaged in making plans or drawings described in paragraph [(j)] (k) of this sub-
 41 section.

42 [(L)] (m) A person providing recommendations or written specifications for soil amendments or
 43 planting media if the recommendations or specifications are solely for the purpose of plant installa-
 44 tion.

45 [(m)] (n) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in super-

1 intending installation work on piping for an irrigation system designed by a landscape contracting
 2 business or by a person registered under ORS 671.310 to 671.459.

3 [(n)] (o) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in super-
 4 intending repair or maintenance work on piping for an irrigation system.

5 [(o)] (p) A journeyman plumber licensed under ORS chapter 693 when performing an installation
 6 for a plumbing contractor described in paragraph [(m)] (n) of this subsection or performing repair
 7 or maintenance work on piping for an irrigation system.

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

11 [(q)] (r) An employee of a licensed landscape contracting business when performing work for the
 12 business under the direct supervision of a licensed landscape construction professional.

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

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

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

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

- 22 (a) Pay a nonrefundable application fee;
- 23 (b) Pay an examination fee;
- 24 (c) Pay to the board the landscape construction professional license fee required by ORS 671.650;
- 25 and
- 26 (d) Pass all sections of the examination described in ORS 671.570 within 12 months after first
 27 taking the examination.

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

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

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

38 (A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of
 39 \$15,000; and

40 (B) Performed landscaping work only on landscaping projects where the amount charged by the
 41 landscape contracting business for work on the project during any 12-month period did not exceed
 42 \$15,000.

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

45 (3) Except as provided in this section and ORS 671.560 and as the board may provide by rule,

1 a probationary landscape construction professional licensed under this section is for all purposes a
 2 landscape construction professional licensed under ORS 671.560.

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

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

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

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

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

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

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

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

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

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

37 (a) An architect [*licensed*] **registered** by the State Board of Architect Examiners.

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

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

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

42 (e) A landscape contracting business licensed under ORS 671.510 to 671.760.

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

45 (g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered

1 under ORS chapter 674 by the Appraiser Certification and Licensure Board.

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

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

6 (b) Subcontracts to a licensed plumbing contractor, or otherwise arranges for a licensed plumb-
7 ing contractor to perform, the installation of an irrigation system described in ORS 671.540 [(1)(m)]
8 (1)(n) or the repair or maintenance of an irrigation system[.]; **or**

9 **(c) Contracts for a landscaping project that includes the performance of both landscaping**
10 **work and the construction of site features. This paragraph does not allow a landscape con-**
11 **tracting business to advertise or represent that the business is licensed to provide con-**
12 **struction contractor services. As used in this paragraph, “site features” means surfaces,**
13 **steps, trellises, benches, water features, spas, ponds, waterways, pools, gazebos, small sheds**
14 **for storing gardening tools and other physical elements in the landscape that are not within**
15 **the scope of a landscape contracting business license. The exception provided by this para-**
16 **graph applies only if the landscape contracting business:**

17 **(A) Subcontracts the construction of the landscape project site features to one or more**
18 **construction contractors licensed and properly endorsed under this chapter to perform the**
19 **work;**

20 **(B) Notwithstanding ORS 671.690, files with the State Landscape Contractors Board a**
21 **bond, letter of credit or deposit for an amount not less than \$15,000; and**

22 **(C) Files with the State Landscape Contractors Board a certificate of public liability,**
23 **personal injury and property damage insurance covering the work of the landscape con-**
24 **tracting business for an amount not less than \$1 million.**

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

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

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

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

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

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

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

40 (15) Units of government other than those specified in ORS 701.005 (5)(c) and (d).

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

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

1 (18) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.

2 **SECTION 6.** ORS 701.026 is amended to read:

3 701.026. (1) A contractor may not [*hire a contractor*] **enter into a contract for a subcontractor**
4 **or contractor** to perform work unless the **performing subcontractor or** contractor is licensed
5 under this chapter and properly endorsed for the work to be performed or is exempt from licensure
6 under ORS 701.010.

7 (2) [*Except as provided in ORS 671.540,*] A contractor [*that is not licensed under ORS 671.560*
8 *shall hire a person*] **may not enter into a contract with a landscape contracting business to**
9 **perform landscaping work unless the landscape contracting business is** licensed under ORS
10 671.560 to perform landscaping work **or the landscape contracting business is exempt from**
11 **licensure under ORS 671.540.**

12 **SECTION 7.** ORS 701.348 is amended to read:

13 701.348. (1) Every person offering to undertake or undertaking construction of building sewer
14 piping shall comply with the requirements of ORS chapter 701.

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

- 17 (a) The person's Construction Contractors Board license number;
- 18 (b) The applicable bonding and liability coverage; and
- 19 (c) The statement described in ORS 701.325 (1).

20 (3) Any person licensed under ORS [*701.026*] **701.021** may install a building sewer after obtaining
21 a permit for plumbing inspection under ORS 447.095.

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

25 **SECTION 8. Section 2 of this 2011 Act and the amendments to ORS 671.540, 701.010 and**
26 **701.026 by sections 3, 5 and 6 of this 2011 Act apply to contracts entered into on or after the**
27 **effective date of this 2011 Act.**

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