

Senate Bill 155

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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**.

Modifies definitions of "residential structure" and "small commercial structure" for purposes of construction contractor laws.

A BILL FOR AN ACT

1
2 Relating to construction contractors; creating new provisions; and amending ORS 701.005 and
3 701.139.

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

5 **SECTION 1.** ORS 701.005, as amended by section 4, chapter 77, Oregon Laws 2010, is amended
6 to read:

7 701.005. As used in this chapter:

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

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

10 (a) Commercial general contractor level 1;

11 (b) Commercial specialty contractor level 1;

12 (c) Commercial general contractor level 2;

13 (d) Commercial specialty contractor level 2; or

14 (e) Commercial developer.

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

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

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

12 (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid
13 to clean or service chimneys.

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

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

21 (b) "General contractor" does not mean a specialty contractor or a residential limited contrac-
22 tor.

23 (8)(a) "Home improvement" means a renovation, remodel, repair or alteration by a residential
24 contractor to an existing owner-occupied:

25 (A) Residence that is a site-built home;

26 (B) Condominium, rental residential unit or other residential dwelling unit that is part of a
27 larger structure, if the property interest in the unit is separate from the property interest in the
28 larger structure;

29 (C) Modular home constructed off-site;

30 (D) Manufactured dwelling; or

31 (E) Floating home, as defined in ORS 830.700.

32 (b) "Home improvement" does not include a renovation, remodel, repair or alteration by a resi-
33 dential contractor:

34 (A) To a structure that contains one or more dwelling units and is four stories or less above
35 grade; or

36 (B) That the residential contractor performed in the course of constructing a new residential
37 structure.

38 (9)(a) "Home inspector" means a person who, for a fee, inspects and provides written reports
39 on the overall physical condition of a residential structure [*and the appurtenances of the residential*
40 *structure*].

41 (b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new,
42 repaired or altered structures for compliance with the state building code.

43 (10) "Key employee" means an employee or owner of a contractor who is a corporate officer,
44 manager, superintendent, foreperson or lead person or any other employee the board identifies by
45 rule.

- 1 (11) “Large commercial structure” means a structure that is not a residential structure or small
 2 commercial structure.
- 3 (12) “Officer” means any of the following persons:
- 4 (a) A president, vice president, secretary, treasurer or director of a corporation.
- 5 (b) A general partner in a limited partnership.
- 6 (c) A manager in a manager-managed limited liability company.
- 7 (d) A member of a member-managed limited liability company.
- 8 (e) A trustee.
- 9 (f) A person the board defines by rule as an officer. The definition of officer adopted by board
 10 rule may include persons not listed in this subsection who may exercise substantial control over a
 11 business.
- 12 (13) “Residential contractor” means a licensed contractor that holds an endorsement as a:
- 13 (a) Residential general contractor;
- 14 (b) Residential specialty contractor;
- 15 (c) Residential limited contractor; or
- 16 (d) Residential developer.
- 17 (14) “Residential developer” means a developer of property that is zoned for or intended for use
 18 compatible with a residential or small commercial structure.
- 19 (15)(a) “Residential structure” means:
- 20 (A) A residence that is a site-built home;
- 21 (B) A structure that contains one or more dwelling units and is four stories or less above grade;
- 22 (C) A condominium, rental residential unit or other residential dwelling unit that is part of a
 23 larger structure, if the property interest in the unit is separate from the property interest in the
 24 larger structure;
- 25 (D) A modular home constructed off-site;
- 26 (E) A manufactured dwelling; [*or*]
- 27 (F) A floating home as defined in ORS 830.700[.]; **or**
- 28 **(G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs**
 29 **(A) to (F) of this paragraph.**
- 30 (b) “Residential structure” does not mean:
- 31 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
 32 nonresidential units;
- 33 (B) Transient lodging;
- 34 (C) A residential school or residence hall;
- 35 (D) A state or local correctional facility other than a local facility for persons enrolled in work
 36 release programs maintained under ORS 144.460;
- 37 (E) A youth correction facility as defined in ORS 420.005;
- 38 (F) A youth care center operated by a county juvenile department under administrative control
 39 of a juvenile court pursuant to ORS 420.855 to 420.885;
- 40 (G) A detention facility as defined in ORS 419A.004;
- 41 (H) A nursing home;
- 42 (I) A hospital; or
- 43 (J) A place constructed primarily for recreational activities.
- 44 (16) “Responsible managing individual” means an individual who:
- 45 (a) Is an owner described in ORS 701.094 or an employee of the business;

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

3 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122
 4 within a period the board identifies by rule;

5 (B) Demonstrated experience the board requires by rule; or

6 (C) Complied with the licensing requirements of ORS 446.395.

7 (17) “Small commercial structure” means:

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

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

15 (c) A nonresidential structure of any size for which the contract price of all construction con-
 16 tractor work to be performed on the structure as part of a construction project does not total more
 17 than \$250,000[.]; **or**

18 **(d) An appurtenance to a structure or unit described in paragraphs (a) to (c) of this**
 19 **subsection.**

20 (18) “Specialty contractor” means a contractor who performs work on a structure, project, de-
 21 velopment or improvement and whose operations as such do not fall within the definition of “general
 22 contractor.” “Specialty contractor” includes a person who performs work regulated under ORS
 23 446.395.

24 (19) “Zero-lot-line dwelling” means a single-family dwelling unit constructed in a group of at-
 25 tached units in which:

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

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

28 **SECTION 2.** ORS 701.139 is amended to read:

29 701.139. The Construction Contractors Board may determine the validity of a complaint de-
 30 scribed in ORS 701.140 filed against a licensed contractor. A person must file the complaint within
 31 the applicable time limitation described in ORS 701.143. The complaint must be filed and resolved
 32 as follows:

33 (1) A complaint against a residential contractor that is not also endorsed as a commercial con-
 34 tractor involving work on a residential or small commercial structure [*or an appurtenance to a res-*
 35 *idential or small commercial structure*] must be resolved as provided in ORS 701.145.

36 (2) A complaint against a commercial contractor that is not also endorsed as a residential con-
 37 tractor involving work on a small commercial or large commercial structure or an appurtenance to
 38 a [*small commercial or*] large commercial structure must be resolved as provided in ORS 701.146.

39 (3) A complaint against a contractor that is endorsed as both a residential contractor and a
 40 commercial contractor:

41 (a) Involving work on a residential structure [*or an appurtenance to a residential structure*] must
 42 be resolved as provided under ORS 701.145.

43 (b) Involving work on a small commercial structure [*or an appurtenance to a small commercial*
 44 *structure*] may be resolved as provided in ORS 701.145 or 701.146, at the complainant’s election.

45 (c) Involving work on a large commercial structure or an appurtenance to a large commercial

1 structure must be resolved as provided in ORS 701.146.

2 (4) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS 701.148,
3 with prior agreement of the complainant and the licensed contractor, a complaint may be resolved
4 by the board through binding arbitration under ORS 701.148.

5 **SECTION 3. The amendments to ORS 701.005 and 701.139 by sections 1 and 2 of this 2011**
6 **Act apply to work performed under construction contracts entered into before, on or after**
7 **the effective date of this 2011 Act.**

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