

Enrolled Senate Bill 939

Sponsored by Senator DEVLIN

CHAPTER

AN ACT

Relating to state financial administration; creating new provisions; amending ORS 171.305, 184.642, 284.126, 284.335, 377.838, 475.304, 676.150, 676.160, 676.410, 676.606, 676.610, 676.612, 676.613, 676.622, 676.625, 676.992, 691.405, 691.415, 691.435, 691.445, 691.465, 691.485, 701.005, 701.068, 701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.149, 701.150, 701.153, 701.180, 701.235, 835.020, 835.035, 835.100, 835.106 and 836.072 and sections 8b and 9e, chapter 877, Oregon Laws 2007, section 5, chapter 755, Oregon Laws 2009, sections 19 and 20, chapter 827, Oregon Laws 2009, and sections 9 and 10, chapter 93, Oregon Laws 2010; repealing ORS 87.058, 691.425, 691.455, 691.495, 691.505, 691.515, 691.535, 691.545, 691.555, 691.565, 691.575, 691.580, 691.585, 691.955 and 701.148 and section 5, chapter 93, Oregon Laws 2010, and section 6, chapter ____, Oregon Laws 2011 (Enrolled House Bill 2049); and declaring an emergency.

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

SEMI-INDEPENDENT AGENCIES

SECTION 1. ORS 284.126 is amended to read:

284.126. (1) The Oregon Tourism Commission shall adopt budgets on a biennial basis using classifications of expenditures and revenue required by ORS 291.206 (1). That portion of the budget that is funded by appropriations from the General Fund or by allocations of lottery funds is subject to review and approval by the Legislative Assembly and to future modification by the Emergency Board or the Legislative Assembly. The remainder of the budget is subject to review and recommendation by the Legislative Assembly.

(2) The commission shall adopt or modify a budget only after a public hearing on the budget. At least 15 days prior to a public hearing, the commission shall give notice of the hearing to all persons known to be interested in the proceedings of the commission and to any person who has requested a notice. **The commission shall file a copy of the adopted or modified budget with the Legislative Fiscal Officer not later than five business days after the commission adopts or modifies a budget.**

(3) The commission shall follow generally accepted accounting principles and keep such financial and statistical information as is necessary to completely and accurately disclose the financial condition and financial operations of the commission as may be required by the Secretary of State.

(4) The commission shall prepare an annual financial statement of commission revenues and expenses and shall make the statement available for public review. **The commission shall file a copy of the annual financial statement with the Legislative Fiscal Officer not later than five business days after the statement is prepared or adopted by the commission.**

SECTION 2. ORS 284.335 is amended to read:

284.335. (1) Except as provided in subsection (2) of this section, when carrying out the duties, functions and powers of the Oregon Film and Video Office, the director of the office may contract with any state agency for the performance of such duties, functions and powers that the director considers appropriate.

(2) The director of the office [shall] **may** not, without the prior approval of the Film and Video Board:

- (a) Award any contract for goods or professional services in excess of \$25,000;
- (b) Authorize any expenditure of moneys in excess of \$25,000;
- (c) Sell or otherwise dispose of real or personal property valued in excess of \$25,000;
- (d) Commence a civil legal action or proceeding;
- (e) Sell, transfer and convey property to a buyer or lease property to a tenant;
- (f) Borrow money and give guarantees;
- (g) Finance, conduct or cooperate in the financing of facilities and projects to assist the film, video and emerging media industries; or
- (h) In accordance with ORS chapter 183, adopt rules necessary for the administration of laws that the office is charged with administering.

(3) The Film and Video Board shall approve the lease of property to a tenant only when the sale, transfer or conveyance of the property cannot be effected with reasonable promptness or at a reasonable price.

(4) The Film and Video Board [shall] **may** not allow the director to borrow money or give guarantees under subsection (2)(f) of this section unless the indebtedness or other obligations of the office are payable solely out of its own resources and do not constitute a pledge of the full faith and credit of the State of Oregon or any of the revenues of this state.

(5) The office shall file with the Governor, [and] the Legislative Assembly **and the Legislative Fiscal Officer** a biennial report of the activities and operations of the office. The report shall include a full and complete reporting of the financial activities and transactions of the office during the biennium, including at least the information required under ORS 284.365 (5).

SECTION 3. ORS 377.838 is amended to read:

377.838. (1) Except as provided in subsection (2) of this section, in carrying out the duties, functions and powers of the Travel Information Council, the director of the Travel Information Council may contract with any state agency for the performance of such duties, functions and powers as the council considers appropriate.

(2) The director of the Travel Information Council [shall] **may** not, without the prior approval of the council:

- (a) Award any contract for goods or professional services in excess of \$25,000; or
- (b) Authorize any expenditure of moneys in excess of \$25,000.

(3) The council shall file with the Governor, [and] the Legislative Assembly **and the Legislative Fiscal Officer** an annual report of the activities and operations of the council.

OREGON HEALTH LICENSING AGENCY

SECTION 4. ORS 691.405 is amended to read:

691.405. As used in ORS 691.405 to 691.585:

[(1) "American Dietetic Association" means the national professional organization of dietitians that provides direction and leadership for quality dietetic practice, education and research.]

[(2) "Board" means the Board of Examiners of Licensed Dietitians established under ORS 691.485.]

[(3) "Commission on Dietetic Registration" means the commission on dietetic registration that is a member of the National Commission for Certifying Agencies.]

[4] (1) “Dietetics practice” means the integration and application of principles derived from the sciences of nutrition, biochemistry, food, management, physiology and behavioral and social sciences to achieve and maintain the health of people through:

- (a) Assessing the nutritional needs of clients;
- (b) Establishing priorities, goals and objectives that meet nutritional needs of clients;
- (c) Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from a nutritional assessment with information on food and other sources of nutrients and meal preparation; and
- (d) Evaluating[,] **and** making changes in [and] **food, diets and nutrition services**, maintaining appropriate standards of **nutritional** quality in food and **maintaining appropriate standards of** nutrition services.

[5] (2) “Licensed dietitian” means a dietitian licensed as provided in ORS 691.435.

SECTION 5. ORS 691.415 is amended to read:

691.415. *[On or after the date stated in the administrative rules adopted by the Board of Examiners of Licensed Dietitians, no]* **A** person who is not licensed under ORS 691.435 *[shall]* **may not** practice or attempt to practice as a licensed dietitian using in connection with the name of the person the words or letters “L.D.,” or “Licensed Dietitian.”

SECTION 6. ORS 691.485 is amended to read:

691.485. (1) There is established *[a]*, **within the Oregon Health Licensing Agency, the Board** *[of Examiners]* of Licensed Dietitians *[for the purpose of carrying out and enforcing the provisions of ORS 691.405 to 691.585]* **to advise the agency with regard to the regulation of dietitians.** The board consists of seven members appointed by the Governor *[and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565]*. All members of the board must be residents of this state. Of the members of the board:

- (a) Two must be members of the general public who are not otherwise qualified for membership on the board and who are not a spouse, domestic partner, child, parent or sibling of a licensed dietitian;
- (b) One must be a physician trained in clinical nutrition; and
- (c) Four must be licensed dietitians who have been engaged in the practice of dietetics for *[no fewer than]* **at least** five years.

[(2)(a) Board members required to be licensed dietitians may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by a professional organization representing dietitians.]

[(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:]

[(A) Geographic areas of this state; and]

[(B) Ethnic group.]

[3] (2) The term of office of each member is *[three]* **four** years, but a member serves at the pleasure of the Governor. *[The terms must be staggered so that no more than three terms end each year.]* A member is eligible for reappointment. **If a person serves two consecutive full terms, a period of at least four years must elapse before the person is again eligible for appointment to serve on the board.** If there is a vacancy on the board for any reason, the Governor shall make an appointment to become immediately effective for the unexpired term. **A member shall hold the member’s office until the appointment and qualification of a successor.**

[4] (3) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. The *[board]* **agency** may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

(4) The board shall meet at least once per year.

SECTION 7. ORS 691.435 is amended to read:

691.435. *[An applicant shall be granted a license as a dietitian if the person has:]* **The Oregon Health Licensing Agency, in consultation with the Board of Licensed Dietitians, shall issue a dietitian license to an applicant who:**

(1) *[Filed]* **Files** an application *[and paid the required application fee;]* **as prescribed by the agency;**

(2) Pays fees established by the agency; and

[(2)] **(3) Demonstrates to the satisfaction of the agency that the applicant has:**

(a) Received a baccalaureate or post-baccalaureate degree from a regionally accredited college or university in the United States with a major course of study in human nutrition, dietetics, foods and nutrition or food systems management approved by the board *[of Examiners of Licensed Dietitians]* as meeting the standards for approval of the course of study under ORS 691.405 to 691.585;

[(3)] *Demonstrated knowledge of the Code of Ethics of the Dietetic Profession; and either*

[(4)] *Satisfactorily completed continuing education requirements established by the board; or*

[(5)] **(b)** Completed a planned, continuous program of dietetic experience approved by the *[board]* **agency** of 900 hours under the supervision of a licensed dietitian; and

[(6)] **(c)** Passed an examination prescribed by the *[board]* **agency.**

SECTION 8. ORS 691.445 is amended to read:

691.445. The **Oregon Health Licensing Agency, in consultation with the Board** *[of Examiners]* of Licensed Dietitians, may waive the examination requirement and grant a **dietitian** license to an applicant *[for a license as a dietitian]* who:

(1) Files an application as prescribed by the agency;

(2) Pays fees established by the agency; and

[(1)] **(3)** Presents satisfactory evidence *[to the board]* of:

(a) Current registration as a dietitian with *[the Commission on Dietetic Registration;]* **a credentialing body approved by the board; or**

(b) **Current licensure under the laws of any other state or territory in the United States, if the requirements for licensure of dietitians in the state or territory in which the applicant is licensed are not less than those required by ORS 691.405 to 691.585.**

[(2)] *Was a practicing dietitian before 1990 and has been employed in the practice of dietetics for at least three of the 10 years prior to October 3, 1989; or*

[(3)] *At the time of application, received a doctorate degree in nutrition, dietetics or related physical sciences under a curriculum approved by the board and been involved in dietetics through practice, teaching or research related to nutrition care.]*

SECTION 9. ORS 691.465 is amended to read:

691.465. *[(1)]* *The Board of Examiners of Licensed Dietitians shall issue a license with a duration of not more than two years to each person approved to be licensed. The license shall be prima facie evidence of the right of the person to whom it is issued to represent the person as a licensed dietitian subject to the provisions of ORS 691.405 to 691.585.]*

[(2)] *Each licensed dietitian shall apply to the board for a renewal of the license at least 30 days before the expiration date. Licenses shall expire on October 31 of odd-numbered years or on such date as may be specified by board rule. Each applicant for renewal shall submit the required fee and present evidence of completion of at least 30 hours of continuing education or present evidence of the minimum continuing education requirements of the American Dietetic Association. Any license that is not renewed by the expiration date shall be automatically suspended. The board may reinstate a suspended license upon payment of a nonrefundable penalty fee and all past unpaid renewal fees.]*

[(3)] *The license fee for a license issued for a period of less than 24 months shall be prorated on a monthly basis to reflect the shorter licensing period.]*

[(4)] *A license that has been suspended by reason of nonpayment of fees for a period of two years or more shall be renewed upon reapplication and payment of all applicable fees.]*

[(5)] *Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges, the fees and charges established under this section shall not exceed the cost of administering the regulatory program for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget to implement ORS 691.405 to 691.585, as the budget may be modified by the Emergency Board.]*

(1) Except as provided in subsections (2) and (3) of this section, a license issued under ORS 691.405 to 691.585 expires one year from the date of issuance. To renew the license, the licensee must submit to the Oregon Health Licensing Agency:

(a) A completed renewal application;

(b) The required renewal fee; and

(c) Satisfactory evidence of having completed any required continuing education credits on or before the expiration date of the license as specified by agency rule.

(2) The agency may vary the date of license renewal by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

(3) The agency shall adopt by rule requirements for late renewal of a license, reactivation of a dormant or expired license or reinstatement of a license that has been expired for more than three consecutive years.

SECTION 10. Sections 11 to 13 of this 2011 Act are added to and made a part of ORS 691.405 to 691.585.

SECTION 11. The Oregon Health Licensing Agency, in consultation with the Board of Licensed Dietitians, shall:

(1) Adopt rules necessary for the administration of ORS 691.405 to 691.585;

(2) Issue, deny, revoke, suspend and renew dietitian licenses;

(3) Determine the qualifications, training, education and fitness of applicants for licenses, renewals of licenses and reciprocal licenses for dietitians;

(4) Determine requirements for reciprocity and equivalency for licensed dietetics practice;

(5) Establish a code of professional responsibility and standards of practice for licensed dietitians;

(6) Develop, approve or recognize examinations to test an applicant's knowledge relating to dietitian techniques and methods and any other subjects the board may determine to be necessary to assess an applicant's fitness to practice as a licensed dietitian;

(7) Provide for waivers of examinations; and

(8) Establish continuing education requirements for renewal of a dietitian license.

SECTION 12. (1) The Oregon Health Licensing Agency shall establish by rule and collect fees and charges for the following related to licensed dietitians:

(a) Application;

(b) Original license;

(c) License renewal;

(d) Temporary practice registration;

(e) Examinations;

(f) License reactivation;

(g) Late renewal;

(h) Replacement or duplicate license;

(i) Reciprocity; and

(j) Providing copies of official documents or records and for recovering administrative costs associated with compiling, photocopying or preparing and delivering the documents or records.

(2) All moneys received by the agency under subsection (1) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account.

SECTION 13. In the manner prescribed in ORS chapter 183 for contested cases and in consultation with the Board of Licensed Dietitians, the Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612 against any person practicing dietetics for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 691.405 to 691.585, or the rules adopted under ORS 691.405 to 691.585.

SECTION 14. ORS 676.606 is amended to read:

676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide administrative and regulatory oversight and centralized service for the following boards, advisory councils and programs:

- (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
- (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;
- (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;
- (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- (5) Respiratory Therapist Licensing Board, as provided in ORS 688.800 to 688.840;
- (6) Environmental Health Registration Board, as provided in ORS chapter 700;
- (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as provided in ORS 690.350 to 690.430;
- (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185;
- (9) Body piercing technician registration program and body piercing facility licensing program, as provided in ORS 690.500 to 690.570;
- (10) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410; [and]
- (11) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820; and
- (12) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.585.**

SECTION 15. ORS 676.610 is amended to read:

676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the agency.

(b) The Director of the Oregon Department of Administrative Services shall establish the qualifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at the pleasure of the Director of the Oregon Department of Administrative Services.

(c) The Director of the Oregon Health Licensing Agency shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Department of Administrative Services.

(d) The Director of the Oregon Health Licensing Agency shall be in the unclassified service.

(2) The Director of the Oregon Health Licensing Agency shall provide the boards, councils and programs administered by the agency with such services and employees as the agency requires to carry out the agency's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Oregon Health Licensing Agency shall appoint all subordinate officers and employees of the agency, prescribe their duties and fix their compensation.

(3) The Director of the Oregon Health Licensing Agency shall be responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570, **691.405 to 691.585** and 694.015 to 694.185 and ORS chapter 700.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the Oregon Health Licensing Agency by other statutes.

SECTION 16. ORS 676.612 is amended to read:

676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 690.515, 694.147 and 700.111 **and section 13 of this 2011 Act**, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit or registration to practice issued by the agency or may discipline or place on probation a holder of a certificate, license, permit or registration for commission of the prohibited acts listed in subsection (2) of this section.

(2) A person subject to the authority of a board, council or program listed in ORS 676.606 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the agency concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the certificate, license, permit or registration holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another certificate, license, permit or registration holder.

(e) Permitting a person other than the certificate, license, permit or registration holder to use the certificate, license, permit or registration.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the holder of a certificate, license, permit or registration or to the person or property of others in the course of performing the holder's duties.

(g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of a holder of a certificate, license, permit or registration.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt shall be considered a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the certificate, license, permit or registration holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(o) Failing to cooperate with the agency in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing any certificate, license, permit or registration to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the agency that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the agency may require the fingerprints of a person who is:

(a) Applying for a certificate, license, permit or registration that is issued by the agency;

(b) Applying for renewal of a certificate, license, permit or registration that is issued by the agency; or

(c) Under investigation by the agency.

(4) If the agency places a holder of a certificate, license, permit or registration on probation under subsection (1) of this section, the agency, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.

(5) If a certificate, license, permit or registration is suspended, the holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the certificate, license, permit or registration may be reinstated by the agency if the conditions of suspension no longer exist and the holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

SECTION 17. ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570, **691.405 to 691.585** or 694.015 to 694.185 or ORS chapter 700, the agency may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

SECTION 18. ORS 676.622 is amended to read:

676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Oregon Health Licensing Agency information and services is exempt from any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570, **691.405 to 691.585** and 694.015 to 694.185 and ORS chapter 700, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

(2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable and have the same force as original signatures.

SECTION 19. ORS 676.625 is amended to read:

676.625. (1) The Oregon Health Licensing Agency shall establish by rule and shall collect fees and charges to carry out the agency's responsibilities under ORS 676.605 to 676.625 and 676.992 and any responsibility imposed on the agency pertaining to the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606.

(2) The Oregon Health Licensing Agency Account is established in the General Fund of the State Treasury. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are appropriated continuously to and shall be used by the Oregon Health Licensing Agency for payment of expenses of the agency in carrying out the duties, functions and obligations of the agency, and for payment of the expenses of the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606. The agency shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting fees and charges credited to the account, the fees and charges may not exceed the cost of administering the agency and the boards, councils and programs

within the agency, as authorized by the Legislative Assembly within the agency's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 675.405, 676.617, 680.525, 687.435, 688.728, 688.834, 690.235, 690.415, 690.550, 694.185 and 700.080 **and section 12 of this 2011 Act**, and moneys credited to the account from other agency and program fees established by the agency by rule, are continuously appropriated to the agency for carrying out the duties, functions and powers of the agency under ORS 676.605 to 676.625 and 676.992.

(5) The moneys received from civil penalties assessed under ORS 676.992 shall be deposited and accounted for as are other moneys received by the agency and shall be for the administration and enforcement of the statutes governing the boards, councils and programs administered by the agency.

SECTION 20. ORS 676.992 is amended to read:

676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.500 to 690.570 (body piercing);
- (c) ORS 690.005 to 690.235 (cosmetology);
- (d) ORS 680.500 to 680.565 (denture technology);
- (e) ORS 687.405 to 687.495 (direct entry midwifery);
- (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- (h) ORS 688.800 to 688.840 (respiratory therapy);
- (i) ORS chapter 700 (environmental sanitation);
- (j) ORS 676.617 (single facility licensure);
- (k) ORS 675.360 to 675.410 (sex offender treatment);
- (L) ORS 678.710 to 678.820 (nursing home administrators); *[and]*
- (m) ORS 691.405 to 691.585 (dietitians); and**
- [(m)] (n) ORS 676.612 (prohibited acts).*

(2) The agency may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any statute listed in subsection (1) of this section or any rule adopted under any statute listed in subsection (1) of this section.

(3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a violation of ORS 694.042.

(4) In imposing a civil penalty pursuant to this section, the agency shall consider the following factors:

- (a) The immediacy and extent to which the violation threatens the public health or safety;
 - (b) Any prior violations of statutes, rules or orders;
 - (c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and
 - (d) Any other aggravating or mitigating factors.
- (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(6) The moneys received by the agency from civil penalties under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account established under ORS 676.625. Such moneys are continuously appropriated to the agency for the administration and enforcement of the laws the agency is charged with administering and enforcing that govern the person against whom the penalty was imposed.

SECTION 21. ORS 676.150 is amended to read:

676.150. (1) As used in this section:

(a) "Board" means the:

- (A) State Board of Examiners for Speech-Language Pathology and Audiology;

- (B) State Board of Chiropractic Examiners;
- (C) State Board of Licensed Social Workers;
- (D) Oregon Board of Licensed Professional Counselors and Therapists;
- (E) Oregon Board of Dentistry;
- (F) Board [of *Examiners*] of Licensed Dietitians;
- (G) State Board of Massage Therapists;
- (H) Oregon Board of Naturopathic Medicine;
- (I) Oregon State Board of Nursing;
- (J) Nursing Home Administrators Board;
- (K) Oregon Board of Optometry;
- (L) State Board of Pharmacy;
- (M) Oregon Medical Board;
- (N) Occupational Therapy Licensing Board;
- (O) Physical Therapist Licensing Board;
- (P) State Board of Psychologist Examiners;
- (Q) Board of Radiologic Technology;
- (R) State Board of Direct Entry Midwifery;
- (S) State Board of Denture Technology;
- (T) Respiratory Therapist Licensing Board;
- (U) Department of Human Services, to the extent that the department certifies emergency medical technicians;
- (V) Oregon State Veterinary Medical Examining Board; or
- (W) State Mortuary and Cemetery Board.

(b) "Licensee" means a health professional licensed or certified by or registered with a board.

(c) "Prohibited conduct" means conduct by a licensee that:

- (A) Constitutes a criminal act against a patient or client; or
- (B) Constitutes a criminal act that creates a risk of harm to a patient or client.

(d) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

(2) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct.

(3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime shall report the conviction or arrest to the licensee's board within 10 days after the conviction or arrest.

(4) The board responsible for a licensee who is reported to have engaged in prohibited or unprofessional conduct shall investigate in accordance with the board's rules. If the board has reasonable cause to believe that the licensee has engaged in prohibited conduct, the board shall present the facts to an appropriate law enforcement agency without undue delay, but in no event later than 10 working days after the board finds reasonable cause to believe that the licensee engaged in prohibited conduct.

(5) A licensee who fails to report prohibited or unprofessional conduct as required by subsection (2) of this section or the licensee's conviction or arrest as required by subsection (3) of this section is subject to discipline by the board responsible for the licensee.

(6) A licensee who fails to report prohibited conduct as required by subsection (2) of this section commits a Class A violation.

(7) Notwithstanding any other provision of law, a report under subsection (2) or (3) of this section is confidential under ORS 676.175. A board may disclose a report as provided in ORS 676.177.

(8) Except as part of an application for a license or for renewal of a license and except as provided in subsection (3) of this section, a board may not require a licensee to report the licensee's criminal conduct.

(9) The obligations imposed by this section are in addition to and not in lieu of other obligations to report unprofessional conduct as provided by statute.

(10) A licensee who reports to a board in good faith as required by subsection (2) of this section is immune from civil liability for making the report.

(11) A board and the members, employees and contractors of the board are immune from civil liability for actions taken in good faith as a result of a report received under subsection (2) or (3) of this section.

SECTION 22. ORS 676.160 is amended to read:

676.160. As used in ORS 676.165 to 676.180, "health professional regulatory board" means the:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Licensed Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) Board [*of Examiners*] of Licensed Dietitians;
- (7) State Board of Massage Therapists;
- (8) State Mortuary and Cemetery Board;
- (9) Oregon Board of Naturopathic Medicine;
- (10) Oregon State Board of Nursing;
- (11) Nursing Home Administrators Board;
- (12) Oregon Board of Optometry;
- (13) State Board of Pharmacy;
- (14) Oregon Medical Board;
- (15) Occupational Therapy Licensing Board;
- (16) Physical Therapist Licensing Board;
- (17) State Board of Psychologist Examiners;
- (18) Board of Medical Imaging;
- (19) Oregon State Veterinary Medical Examining Board; and
- (20) Oregon Health Authority to the extent that the authority certifies emergency medical technicians.

SECTION 23. ORS 676.410 is amended to read:

676.410. (1) As used in this section, "healthcare workforce regulatory board" means the:

- (a) Occupational Therapy Licensing Board;
- (b) Oregon Medical Board;
- (c) Oregon State Board of Nursing;
- (d) Oregon Board of Dentistry;
- (e) Physical Therapist Licensing Board;
- (f) State Board of Pharmacy; and
- (g) Board [*of Examiners*] of Licensed Dietitians.

(2)(a) An applicant for a license from a healthcare workforce regulatory board or renewal of a license by a healthcare workforce regulatory board shall provide the information prescribed by the Office for Oregon Health Policy and Research pursuant to subsection (3) of this section.

(b) Except as provided in subsection (4) of this section, a healthcare workforce regulatory board may not approve a subsequent application for a license or renewal of a license until the applicant provides the information.

(3) The Administrator for the Office for Oregon Health Policy and Research shall collaborate with the healthcare workforce regulatory boards to adopt rules for the manner, form and content for reporting, and the information that must be provided to a healthcare workforce regulatory board under subsection (2) of this section, which may include:

- (a) Demographics, including race and ethnicity.
- (b) Education information.
- (c) License information.
- (d) Employment information.
- (e) Primary and secondary practice information.
- (f) Anticipated changes in the practice.
- (g) Languages spoken.

(4)(a) A healthcare workforce regulatory board shall report healthcare workforce information collected under subsection (2) of this section to the Office for Oregon Health Policy and Research.

(b) A healthcare workforce regulatory board shall keep confidential and not release personally identifiable data collected under this section for a person licensed, registered or certified by a board. This paragraph does not apply to the release of information to a law enforcement agency for investigative purposes or to the release to the Office for Oregon Health Policy and Research for state health planning purposes.

(5) The requirements of subsection (2) of this section apply to an applicant for issuance or renewal of a license who is or who is applying to become:

- (a) An occupational therapist or certified occupational therapy assistant as defined in ORS 675.210;
- (b) A physician as defined in ORS 677.010;
- (c) A physician assistant as defined in ORS 677.495;
- (d) A nurse or nursing assistant licensed or certified under ORS 678.010 to 678.410;
- (e) A dentist or dental hygienist as defined in ORS 679.010;
- (f) A physical therapist or physical therapist assistant as defined in ORS 688.010;
- (g) A pharmacist or pharmacy technician as defined in ORS 689.005; or
- (h) A licensed dietitian, as defined in ORS 691.405.

(6) A healthcare workforce regulatory board may adopt rules as necessary to perform the board's duties under this section.

(7) In addition to licensing fees that may be imposed by a healthcare workforce regulatory board, the Oregon Health Policy Board shall establish fees to be paid by applicants for issuance or renewal of licenses reasonably calculated to reimburse the actual cost of obtaining or reporting information as required by subsection (2) of this section.

SECTION 24. ORS 691.425, 691.455, 691.495, 691.505, 691.515, 691.535, 691.545, 691.555, 691.565, 691.575, 691.580, 691.585 and 691.955 are repealed.

SECTION 25. The unexpended balance of the Board of Examiners of Licensed Dietitians Account established in ORS 691.565 is transferred to the Oregon Health Licensing Agency Account established in ORS 676.625 for expenditure by the agency for the biennium beginning July 1, 2011, as provided in ORS 676.625.

SECTION 26. (1) The repeal of ORS 691.505, 691.535, 691.545, 691.555 and 691.995 by section 24 of this 2011 Act does not affect any proceeding under ORS 691.505, 691.535, 691.545, 691.555 or 691.995 begun before and pending on the effective date of this 2011 Act, except that the Oregon Health Licensing Agency is substituted for the Board of Examiners of Licensed Dietitians in the proceeding.

(2) The amendments to ORS 691.485 by section 6 of this 2011 Act are intended to change the name of the Board of Examiners of Licensed Dietitians to the Board of Licensed Dietitians.

(3) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel may substitute for words designating the Board of Examiners of Licensed Dietitians, wherever they occur in statutory law, other words designating the Board of Licensed Dietitians.

SECRETARY OF STATE

SECTION 27. Notwithstanding ORS 56.041 and in addition to the transfers required by ORS 56.041 (4), the amount of \$4,700,000 is transferred from the Operating Account to the General Fund for general governmental purposes. The transfer shall be made on May 31, 2012.

STATE FINANCE

SECTION 28. (1) Notwithstanding any provision of ORS 291.232 to 291.260, state agencies may submit estimates for allotment periods, and the Oregon Department of Administrative Services shall approve estimates and administer the allotment system provided for in ORS 291.232 to 291.260 in a manner that allows state agencies to expend, during the period beginning July 1, 2011, and ending June 30, 2012, up to 54 percent of the amount appropriated to the agency for the biennium beginning July 1, 2011.

(2) Notwithstanding any provision of law, the Oregon Department of Administrative Services shall establish a process for allocating available moneys in the Administrative Services Economic Development Fund in a manner that allows state agencies to expend, during the period beginning July 1, 2011, and ending June 30, 2012, up to 54 percent of the amount allocated to the agency for the biennium beginning July 1, 2011.

AVIATION DEPARTMENT

SECTION 29. (1) The Department of Transportation shall provide the following central business operating services for the Oregon Department of Aviation:

- (a) Budget preparation services;
- (b) Daily processing for accounts payable, accounts receivable, payroll, receipts and disbursements;
- (c) Records and inventory maintenance accounting services;
- (d) Financial management reports and revenue and expenditure projections;
- (e) Purchasing, leasing and contracting services;
- (f) Internal audit services;
- (g) Computer and information system services; and
- (h) Human resource services.

(2) The Oregon Department of Aviation shall comply with all rules adopted by the Department of Transportation related to the services described in subsection (1) of this section.

(3) The Department of Transportation may charge the Oregon Department of Aviation a fee for the services the Department of Transportation provides under this section. The Department of Transportation shall calculate the rate of the fee using the same methodology the Department of Transportation uses to calculate the central services assessment imposed within the Department of Transportation for similar services. The Oregon Department of Aviation shall pay any fees imposed under this section within 30 days of receiving the request for payment.

(4) All moneys received by the Department of Transportation under this section shall be paid into the State Treasury each month and credited to the Department of Transportation Operating Fund established by ORS 184.642.

(5) The Department of Transportation shall adopt rules for the administration and implementation of this section.

SECTION 30. ORS 835.020 is amended to read:

835.020. **Subject to section 29 of this 2011 Act,** the Director of the Oregon Department of Aviation may enter into any contracts authorized by the State Aviation Board and necessary to the execution of the powers granted by this chapter. All contracts made by the director, either as the agent of the state or as the agent of any municipality, shall be made pursuant to the laws of the state governing the making of like contracts; however, where the planning, acquisition, construction,

improvement, maintenance or operation of any airport, or any navigation facility is financed wholly or in part with federal money, the director as the agent of the state or any municipality may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder.

SECTION 31. ORS 835.035 is amended to read:

835.035. (1) **Subject to section 29 of this 2011 Act**, the State Aviation Board may perform such acts, adopt or amend and issue such orders, rules and regulations, and make, promulgate and amend such minimum standards, all consistent with the provisions of this chapter, as it considers necessary to carry out the provisions of this chapter and to perform its duties thereunder.

(2) No such rule, regulation or order of the board shall apply to airports or air navigation facilities owned or operated by the United States.

(3) All authority, power and duty delegated to the board by the provisions of this section shall be exercised and performed in all respects commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, or using or traveling in aircraft, and of persons or property on land or water, and to develop and promote aviation in this state.

(4) Promulgation of rules, conduct of hearings and issuance and judicial review of rules and orders shall be in accordance with ORS chapter 183.

SECTION 32. ORS 835.100 is amended to read:

835.100. (1) The Oregon Department of Aviation is established.

(2) The department is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers of the department, **subject to section 29 of this 2011 Act**.

(3) For purposes of administration, subject to the approval of the State Aviation Board, the director may organize and reorganize the department as the director considers necessary to conduct properly the work of the department.

SECTION 33. ORS 835.106 is amended to read:

835.106. (1) The Governor shall appoint the Director of the Oregon Department of Aviation, subject to confirmation by the Senate pursuant to ORS 171.562 and 171.565, who holds office at the pleasure of the Governor.

(2) Subject to **section 29 of this 2011 Act and the** policy direction by the State Aviation Board, the director shall:

(a) Be the administrative head of the department;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department and prescribe their duties and fix their compensation, subject to the State Personnel Relations Law;

(c) Administer the laws of the state concerning aviation; and

(d) Intervene, as authorized by the board, pursuant to the rules of practice and procedure, in the proceedings of state and federal agencies that may substantially affect the interests of the consumers and providers of aviation services within Oregon.

(3) **Subject to section 29 of this 2011 Act**, in addition to duties otherwise required by law, the director shall prescribe regulations for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(4) The director may delegate to any of the employees of the department the exercise or discharge in the director's name of any duty, function or power of whatever character, vested in or imposed by law upon the director, including duties, functions or powers delegated to the director by the board. The official act of any person acting in the director's name and by the authority of the director shall be considered to be an official act of the director.

(5) The director shall have authority to require a fidelity bond of any officer or employee of the department who has charge of, handles or has access to any state money or property, and who is not otherwise required by law to give a bond. The amounts of the bonds shall be fixed by the di-

rector, except as otherwise provided by law, and the sureties shall be approved by the director. The department shall pay the premiums on the bonds.

(6) The director shall prepare and submit to the board on or about December 31 of each year an annual report for the 12 months ending the prior June 30. The annual report shall set forth all that the department has done during the year. The report shall contain a statement of the parts of the state aviation system that were constructed, reconstructed or improved during the period, together with a statement showing in a general way the status of the state aviation system.

SECTION 34. ORS 184.642 is amended to read:

184.642. (1) The Department of Transportation Operating Fund is established in the State Treasury separate and distinct from the General Fund and separate and distinct from the State Highway Fund. Except as otherwise provided in subsection (3)(e) of this section, moneys in the Department of Transportation Operating Fund are continuously appropriated to the Department of Transportation to pay expenses of the department that are incurred in the performance of functions the department is statutorily required or authorized to perform and that may not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution.

(2) The operating fund shall consist of the following:

(a) Taxes paid on motor vehicle fuels or on the use of fuel in a motor vehicle for which a person is entitled to a refund under a provision described in this paragraph but for which no refund is claimed, in amounts determined under ORS 184.643. This paragraph applies to refund entitlements described in ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b).

(b) Fees collected under ORS 822.700 for issuance or renewal of:

- (A) Dismantler certificates;
- (B) Vehicle dealer certificates;
- (C) Driver training certificates;
- (D) Commercial driver training school certificates; and
- (E) Appraiser certificates.

(c) Fees collected under ORS 822.705.

(d) Moneys from civil penalties imposed under ORS 822.009.

(e) Fees collected under ORS 807.410 for identification cards.

(f) Fees collected by the department for issuance of permits to engage in activities described in ORS 374.305 to 374.330 that are not directly connected to the construction, reconstruction, improvement, repair, maintenance, operation and use of a public highway, road, street or roadside rest area.

(g) Fees collected under section 29 of this 2011 Act for services provided to the Oregon Department of Aviation.

~~[(g)]~~ (h) Interest and other earnings on moneys in the operating fund.

(3) Moneys in the Department of Transportation Operating Fund established by subsections (1) and (2) of this section may be spent only as follows:

(a) Taxes described in subsection (2)(a) of this section may be used only for payment of expenses of the Department of Transportation that:

(A) May not constitutionally be paid from revenues described in section 3a, Article IX of the Oregon Constitution;

(B) Are incurred in the performance of functions the department is statutorily required or authorized to perform; and

(C) Are not payable from moneys described in paragraphs (b) to (e) of this subsection.

(b) Fees collected under subsection (2)(b) of this section may be used only to carry out the regulatory functions of the department relating to the businesses that generate the fees.

(c) Fees collected under ORS 822.705 may be used only for the purposes described in ORS 822.705.

(d) Moneys collected from civil penalties imposed under ORS 822.009 may be used only for regulation of vehicle dealers.

(e) Moneys collected under ORS 807.410 from fees for identification cards shall be used first to pay the expenses of the department for performing the functions of the department relating to identification cards. After paying the expenses related to identification cards, the department shall transfer the remaining moneys collected under ORS 807.410 to the Elderly and Disabled Special Transportation Fund established in ORS 391.800.

(f) Moneys from the permits described in subsection (2)(f) of this section may be used for costs of issuing the permits and monitoring the activities that generate the fees.

(g) Moneys from interest and other earnings on moneys in the operating fund may be used for any purpose for which other moneys in the fund may be used.

SECTION 35. ORS 836.072, as amended by sections 7 and 8, chapter 107, Oregon Laws 2010, is amended to read:

836.072. (1) Moneys from the increases in taxes by the amendments to ORS 319.020 by sections 1 and 3, chapter 1037, Oregon Laws 1999, shall be used by the Oregon Department of Aviation to establish and fund a program to maintain and preserve the pavements used for runways, taxiways and aircraft parking areas at public use airports in this state.

(2) Projects for maintenance and preservation of pavements at public use airports that are identified in the plan developed under ORS 835.015 are eligible for funding under this section. The following expenses of projects selected may be funded under this section:

- (a) Construction expenses;
- (b) Engineering expenses; and
- (c) Administrative expenses.

(3) The Director of the Oregon Department of Aviation shall prepare a list of recommended projects. Factors to be used by the director include, but are not limited to:

- (a) The age and condition of pavements;
- (b) An airport's role in the state's aviation system, as described by the plan developed under ORS 835.015; and
- (c) Local financial participation in projects.

(4) The director shall forward the list of recommended projects to the State Aviation Board for approval.

(5) The department may adopt such rules as it deems necessary for implementation of the airport pavement preservation program.

(6) No more than 55 percent of the combined tax revenue from aircraft fuel used or distributed by a dealer and aircraft fuel usable in aircraft operated by turbine engines may be used for operating expenses of the department.

(7) For purposes of this section, "operating expenses of the department" includes, but is not limited to, expenses for personal services, central business operating services described in section 29 (1) of this 2011 Act, supplies and capital outlay.

SECTION 36. The amendments to ORS 836.072 by section 35 of this 2011 Act become operative July 1, 2012.

OLCC BOTTLE SURCHARGE

SECTION 37. For the biennium beginning July 1, 2011, notwithstanding ORS 471.810, amounts to be distributed from the Oregon Liquor Control Commission Account that are attributable to a per bottle surcharge imposed by the Oregon Liquor Control Commission on June 3, 2009, and extended on May 27, 2011, shall be credited to the General Fund.

CONSTRUCTION CONTRACTORS BOARD

SECTION 38. ORS 701.005, as amended by section 4, chapter 77, Oregon Laws 2010, is amended to read:

701.005. As used in this chapter:

- (1) "Board" means the Construction Contractors Board.
- (2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:
- (a) Commercial general contractor level 1;
 - (b) Commercial specialty contractor level 1;
 - (c) Commercial general contractor level 2;
 - (d) Commercial specialty contractor level 2; or
 - (e) Commercial developer.
- (3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.
- (4) "Construction debt" means an amount owed under:
- (a) An order or arbitration award issued by the board that has become final by operation of law;
 - (b) A judgment, **arbitration award** or civil penalty that has become final by operation of law arising from construction activities within the United States; or
 - (c) A judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017.
- (5) "Contractor" means any of the following:
- (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to do any part thereof.
 - (b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.
 - (c) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.
 - (d) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.
 - (e) A person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.
 - (f) A business that supplies the services of a home inspector certified under ORS 701.350 or a cross-connection inspector and backflow assembly tester certified under ORS 448.279.
 - (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid to clean or service chimneys.
- (6) "Developer" means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.
- (7)(a) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board.
- (b) "General contractor" does not mean a specialty contractor or a residential limited contractor.
- (8)(a) "Home improvement" means a renovation, remodel, repair or alteration by a residential contractor to an existing owner-occupied:
- (A) Residence that is a site-built home;
 - (B) Condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;
 - (C) Modular home constructed off-site;

- (D) Manufactured dwelling; or
- (E) Floating home, as defined in ORS 830.700.
- (b) "Home improvement" does not include a renovation, remodel, repair or alteration by a residential contractor:
 - (A) To a structure that contains one or more dwelling units and is four stories or less above grade; or
 - (B) That the residential contractor performed in the course of constructing a new residential structure.
- (9)(a) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances of the residential structure.
 - (b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.
- (10) "Key employee" means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee the board identifies by rule.
- (11) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.
- (12) "Officer" means any of the following persons:
 - (a) A president, vice president, secretary, treasurer or director of a corporation.
 - (b) A general partner in a limited partnership.
 - (c) A manager in a manager-managed limited liability company.
 - (d) A member of a member-managed limited liability company.
 - (e) A trustee.
 - (f) A person the board defines by rule as an officer. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.
- (13) "Residential contractor" means a licensed contractor that holds an endorsement as a:
 - (a) Residential general contractor;
 - (b) Residential specialty contractor;
 - (c) Residential limited contractor; or
 - (d) Residential developer.
- (14) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.
- (15)(a) "Residential structure" means:
 - (A) A residence that is a site-built home;
 - (B) A structure that contains one or more dwelling units and is four stories or less above grade;
 - (C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;
 - (D) A modular home constructed off-site;
 - (E) A manufactured dwelling; or
 - (F) A floating home as defined in ORS 830.700.
- (b) "Residential structure" does not mean:
 - (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;
 - (B) Transient lodging;
 - (C) A residential school or residence hall;
 - (D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;
 - (E) A youth correction facility as defined in ORS 420.005;

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

(G) A detention facility as defined in ORS 419A.004;

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

(16) "Responsible managing individual" means an individual who:

(a) Is an owner described in ORS 701.094 or an employee of the business;

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

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

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

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

(17) "Small commercial structure" means:

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

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

(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.

(18) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS 446.395.

(19) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

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

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

SECTION 39. ORS 701.068 is amended to read:

701.068. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in ORS 701.081 or 701.084.

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

(3) The surety bond for a residential contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts [*ordered paid*] **determined** by the board **as provided** under ORS 701.145. The surety bond for a commercial contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts [*ordered paid*] **determined** by the board **as provided** under ORS 701.146. Bonds filed under this section shall remain in effect for at least one year or until depleted by payments under ORS 701.150, 701.153 and 701.157, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection (4) of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided

in subsection (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board [order for payment of a complaint described in ORS 701.140] **determination issued under ORS 701.145 or 701.146**, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

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

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

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

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

(7) The bond required under this section is for the exclusive purpose of payment of amounts for which the board has determined the surety to have responsibility.

(8) Upon issuance of a determination under ORS 701.145 or 701.146 for a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the determination in a manner determined by the board by rule. The notification shall include a list of all board determinations for payment by the surety from the bond.

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

(10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay [a final order] **an amount determined by the board**, the court may award:

(a) Costs;

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

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

(c) Twice the amount that the board determined the surety must pay on the complaint, if the surety arbitrarily and capriciously refused to pay.

SECTION 40. ORS 701.088 is amended to read:

701.088. (1) As used in this section:

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

(b) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) The Construction Contractors Board shall adopt rules prescribing terms and conditions under which a general or specialty contractor that is a nonprofit organization engaged in rehabilitat-

ing an illegal drug manufacturing site may substitute a letter of credit from a bank authorized to do business in this state, or substitute a cash deposit, for a bond required under ORS 701.068. A letter of credit or cash deposit described in this section substitutes for a bond only for purposes of work the contractor performs on an illegal drug manufacturing site. The letter of credit or cash deposit must be equivalent in amount to the bond that would otherwise be required of the contractor under ORS 701.068.

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

(4) A contractor that supplies a letter of credit or cash deposit under this section is considered to be bonded under ORS 701.068 for purposes of performing rehabilitation work on illegal drug manufacturing sites. A letter of credit or cash deposit that a contractor supplies under this section is considered to be a surety bond issued under ORS 701.068 for purposes of claims involving the contractor's rehabilitation work on illegal drug manufacturing sites. The issuer of a letter of credit described in this section is considered to be a surety for a bond only for purposes of receiving [notice] **notification of a determination** under ORS 701.068 or 701.146.

SECTION 41. ORS 701.117 is amended to read:

701.117. A contractor shall notify the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor's license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case [or arbitration] directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail.

SECTION 42. ORS 701.133, as amended by section 49, chapter 107, Oregon Laws 2010, is amended to read:

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (6) for a plaintiff filing a civil action in circuit court. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees [as damages in the final order of the board].

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

SECTION 43. ORS 701.133, as amended by sections 49 and 50, chapter 107, Oregon Laws 2010, is amended to read:

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for a plaintiff filing a civil action in circuit court. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees [*as damages in the final order of the board*].

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

SECTION 44. ORS 701.139 is amended to read:

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

(1) A complaint against a residential contractor that is not also endorsed as a commercial contractor involving work on a residential or small commercial structure or an appurtenance to a residential or small commercial structure must be resolved as provided in ORS 701.145.

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor involving work on a small commercial or large commercial structure or an appurtenance to a small commercial or large commercial structure must be resolved as provided in ORS 701.146.

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

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

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

(c) Involving work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

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

SECTION 45. ORS 701.140 is amended to read:

701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the performance, of work that requires a contractor license issued by the Construction Contractors Board. The complaint must be of one or more of the following types:

(1) A complaint against a contractor by the owner of a structure or other real property for the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A complaint against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. *[If the complaint is processed under ORS 701.145, the Construction Contractors Board may reduce the amount of the complaint by any amount the complainant owes the contractor.]* The board shall process complaints described in this subsection under ORS 701.145 only if:

(a) The owner paid the contractor for that contractor's work subject to this chapter;

(b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement; and

(c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).

(3) A complaint against a licensed subcontractor by a licensed contractor for the following:

- (a) Negligent work;
- (b) Improper work; or
- (c) Breach of contract.

(4) A complaint by a person furnishing labor to a contractor or owed employee benefits by a contractor.

(5) A complaint, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.

(6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

SECTION 46. ORS 701.145 is amended to read:

701.145. For a complaint described in ORS 701.139 (1) or (3)(a) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The complainant must file the complaint with the Construction Contractors Board in a form prescribed by the board.

(2) The board may suspend processing of the complaint if:

(a) The same facts and issues involved in the complaint have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the dispute described in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

(3) The board may dismiss or close the complaint as established by rule of the board if any of the following conditions apply:

(a) The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.

(b) The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.

(c) The complainant does not permit the contractor against whom the complaint is filed to be present at an on-site investigation made by the board.

[(d) The board determines that the contractor against whom the complaint is filed is capable of complying with recommendations made by the board relative to the complaint, but the complainant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a complaint under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.]

[(e)] (d) The amount in controversy is less than an amount adopted by the board and not more than \$250.

[(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine the validity of the complaint. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. The board may conduct one or more on-site meetings to mediate or investigate the complaint.]

[(5) Subject to ORS 701.148, if the board is unable to resolve the complaint under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:]

[(a) Issue a proposed default order under ORS 183.417 to become effective only if a party does not request a contested case hearing; or]

[(b) Refer the matter for hearing.]

[(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.068.]

(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine board jurisdiction over the complaint. The board shall attempt to conduct one or more meetings on-site or by telephone to mediate a dispute. During mediation of a dispute, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

(5) If the parties do not resolve or settle the complaint, except as provided in subsection (6) of this section, the complainant may recover payment from the bond of the contractor only by obtaining:

(a) A final judgment against the contractor issued by a court of competent jurisdiction; or

(b) An arbitration award against the contractor that a court has reduced to a final judgment.

(6) If the complaint is filed under ORS 701.140 (4), the complainant may recover payment from the bond of the contractor as provided in subsection (5)(a) of this section or by obtaining a final order issued by the Bureau of Labor and Industries that states an amount of unpaid wages that the licensed contractor owes under ORS 652.140 or ORS 653.010 to 653.261.

(7) For purposes of subsections (5) and (6) of this section, "final" means that the judgment or order has become final by operation or law or on appeal.

(8) The board shall send the surety on the contractor bond required under ORS 701.068 a copy of the final judgment or bureau final order, and a copy of a determination issued by the board that the surety must pay the amount stated by the board. A determination issued by the board may not include payment of any attorney fees awarded in the final judgment

or bureau final order. The determination issued by the board is an order in other than a contested case proceeding. The determination order is not recordable under ORS 701.153 (1) and (2) to create a lien.

SECTION 47. ORS 701.146 is amended to read:

701.146. For a complaint described in ORS 701.139 (2) or (3)(c) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

(4) Except as provided in this subsection and subsection (7) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant's attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a [*proposed order in*] **determination that the surety must pay the amount stated by the board. The determination issued by the board is an order in other than a contested case proceeding. The determination shall include** the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety. [*The board shall issue the proposed order in a form that indicates the surety's maximum liability to the complainant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:*]

[*(a) Whether the complaint was timely filed with the board as provided in ORS 701.143.*]

[*(b) Whether the surety received timely notice as provided in subsections (2) and (6) of this section.*]

[*(c) Whether the complaint is for work subject to this chapter.*]

[*(d) The extent of the surety's liability to the complainant.*]

SECTION 48. ORS 701.149 is amended to read:

701.149. [(1) *An arbitration conducted under ORS 701.148 must be held before an administrative law judge assigned under ORS 183.605 to 183.690 to act as arbitrator on behalf of the Construction Contractors Board. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.*]

[(2) *If a party to a complaint under ORS 701.145 requests a contested case hearing, the board shall schedule the hearing.*]

[(3) *The board may adopt rules governing the avoidance of a contested case hearing. The rules may include, but need not be limited to, a limit on the time period during which a party to a complaint may avoid a contested case hearing by filing a court action.*]

[(4) *Contested case hearings before the board must be conducted by an administrative law judge assigned under ORS 183.605 to 183.690. Notwithstanding ORS 670.325, the board may delegate authority to the administrative law judge to issue a final order in any matter.*]

[(5) *In assigning administrative law judges for arbitration and contested case hearings conducted under this section, the chief administrative law judge of the Office of Administrative Hearings established under ORS 183.605 shall defer to board requests.*]

[(6) (1) [*If a complainant to the board files a court action,*] **If the Construction Contractors Board suspends the processing of a complaint because of the complaint having been submitted to a court or arbitrator or because of a court having stayed action on the complaint,** the board may require that the complainant provide status reports on the pending court action **or arbitration**. The board may dismiss or close a complaint filed under ORS 701.139 if the complainant fails to submit status reports on a pending court action **or arbitration**.

[(7) (2) ORS 183.605 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or **referral for** arbitration, to resolve complaints against contractors filed under ORS 701.139.

SECTION 49. ORS 701.150 is amended to read:

701.150. [(1) *A Construction Contractors Board final order that is not paid by the contractor and that:*]

[*(a) Arises out of a complaint filed under ORS 701.145 must be satisfied from a bond required for a residential contractor.*]

[*(b) Arises out of a complaint filed under ORS 701.146 must be satisfied from a bond required for a commercial contractor.*]

(1) If a licensed contractor fails to pay a complainant amounts due under a court judgment or under a final order of the Bureau of Labor and Industries, the Construction Con-

tractors Board shall issue a determination stating the amount that a surety must pay the complainant. The surety shall pay the amount required under the determination as follows:

(a) If the complaint was filed under ORS 701.145, the surety shall pay the amount from a bond required for a residential contractor.

(b) If the complaint was filed under ORS 701.146, the surety shall pay the amount from a bond required for a commercial contractor.

(2) *[If a board final order is not paid by the contractor, the board shall notify the surety on the bond.]* The surety may not pay on a complaint until the surety receives notice from the board that the complaint is ready for payment.

(3) Notwithstanding ORS 701.153 and 701.157, a bond is not subject to payment for a complaint that is filed more than 14 months after the earlier of:

(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or

(b) The date that the surety canceled the bond.

SECTION 50. ORS 701.153 is amended to read:

701.153. (1) If an order of the Construction Contractors Board *[that]* determines a complaint *[under ORS 701.145]* **against a residential contractor that was filed with the board prior to July 1, 2011, and the order** becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt **of an order described in subsection (1) of this section**, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order **described in subsection (1) of this section** in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to *[board order and notice]* **a board determination under ORS 701.145** are satisfied in the following priority in any 90-day period:

(A) Board *[orders]* **determinations** as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

[(B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure complaints filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.]

(B) If the determinations described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due under board determinations for all other types of residential or small commercial structure complaints filed with the board within that 90-day period may be paid from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

[(4) If the total complaints filed with the board against a residential contractor within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for those complaints, the bond shall be apportioned as the board determines, subject to the priorities established under this section.]

[(5) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted.]

[(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.]

(4) If the total amount payable under determinations issued by the board for complaints against a residential contractor filed with the board within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for payment, subject to the priorities under this section, the board shall decide how payment of the determined amounts from the bond is to be apportioned.

(5) If the total amount payable under determinations issued by the board as a result of complaints that were filed with the board within 90 days after the board receives notice of the first complaint do not exceed the amount of the bond available for payment, those determinations have payment priority over amounts due under determinations resulting from subsequently filed complaints.

(6) The total amount paid from a residential contractor bond for costs and interest under all determinations issued by the board under ORS 701.145 may not exceed \$3,000.

SECTION 51. ORS 701.180 is amended to read:

701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to a mediation or arbitration[.] **process in lieu of mediation by the board under ORS 701.145. If the parties do not resolve or settle the dispute pursuant to board mediation under ORS 701.145, unless otherwise provided by law regarding a dispute described under ORS 652.140 or 653.010 to 653.261, the complainant must comply with any contractual provision for mediation or arbitration of the dispute as a condition for obtaining the judgment required under ORS 701.145 (5).**

SECTION 52. ORS 701.235 is amended to read:

701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual relationship between the complainant and the contractor;
- (d) Subject to ORS **701.145**, 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and
- (e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068.

SECTION 53. ORS **87.058** and **701.148** are repealed.

SECTION 54. (1) **The amendments to ORS 701.005, 701.068, 701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.149, 701.150, 701.153, 701.180 and 701.235 by sections 38 to 52 of this 2011 Act apply to complaints filed with the Construction Contractors Board on or after July 1, 2011. The Legislative Assembly expressly intends that the amendments to ORS 701.005, 701.068, 701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.149, 701.150, 701.153, 701.180 and 701.235 by sections 38 to 52 of this 2011 Act may be applied retroactively if necessary to process a complaint filed with the board on or after July 1, 2011.**

(2) Notwithstanding the repeal of ORS 701.148 by section 53 of this 2011 Act, the board shall complete the processing and resolution of any complaint filed with the board prior to July 1, 2011, and pending on July 1, 2011, in accordance with ORS 87.058, 701.005, 701.068,

701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.148, 701.149, 701.150, 701.153, 701.180 and 701.235 as amended and in effect immediately prior to July 1, 2011.

(3) The repeal of ORS 87.058 by section 53 of this 2011 Act does not affect any stay of proceedings issued by a court prior to July 1, 2011, under ORS 87.058. Notwithstanding the repeal of ORS 87.058 by section 53 of this 2011 Act, an owner of a structure subject to a lien perfected under ORS 87.035 who files a complaint with the board prior to July 1, 2011, may obtain on or after July 1, 2011, a stay of proceedings as described on the suit to foreclose the lien as described in ORS 87.058 as amended and in effect immediately prior to July 1, 2011.

SECTION 55. Section 56 of this 2011 Act is added to and made a part of ORS 87.001 to 87.060.

SECTION 56. (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 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 under ORS 701.145; and

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

(A) A description of the structure;

(B) The street address of the structure;

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

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

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

(5) After the board order on the complaint becomes final and the board issues any required notice for payment against the contractor’s bond or deposit, the circuit court shall dissolve the stay ordered under subsection (4) of this section.

SECTION 57. Section 58 of this 2011 Act is added to and made a part of ORS chapter 701.

SECTION 58. (1) Subject to subsection (4) of this section, if the resolution of a complaint under ORS 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (3) of this section. This subsection does not authorize the board to require binding arbitration of a complaint that is subject to ORS 701.146.

(2) The board may use mediation or arbitration to resolve a construction dispute between any parties who agree to follow the rules of the board, other than a dispute involving work on a large commercial structure.

(3) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (1) and (2) of this section must substantially conform with the provisions 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 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and

(e) Include any other provision necessary to conform the arbitration to this chapter.

(4) A party to a complaint that is subject to a board order of binding arbitration under subsection (1) of this section may avoid the arbitration if the party requests to have the complaint resolved through a contested case hearing or files a court action. A party making a hearing request or filing a court action under this subsection is subject to the following provisions:

(a) If the party requests to have a complaint resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a court action, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the party's court pleading to the board and to all persons entitled by board rule to receive a copy of the pleading. If the party filing the court action is the complainant to the board, the complainant must plead all facts and issues of the board complaint in the court action. If the court action is filed by the contractor against whom a board complaint is alleged, the court action must be an action for damages, an action for declaratory judgment or another action that allows the board complainant to file a response pleading all facts and issues of the board complaint. The board complainant has the burden of proving the elements of the board complaint in a court action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver the contested case hearing request or the copy of the party's court pleading to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or court pleading under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a court action and complies with paragraph (b) of this subsection, the filing of the court action supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The board may adopt a rule that a contested case hearing for a complaint seeking less than \$1,000 is not available under this subsection.

(g) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a court action.

(5) The board may refuse to accept a dispute for mediation or arbitration under subsection (1) or (2) of this section if the board determines that the nature or complexity of the dispute is such that a court or other forum is more appropriate for resolution of the dispute.

SECTION 59. ORS 701.005, as amended by section 4, chapter 77, Oregon Laws 2010, and section 38 of this 2011 Act, is amended to read:

701.005. As used in this chapter:

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

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

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

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

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

- (a) An order or arbitration award issued by the board that has become final by operation of law;
- (b) A judgment[, *arbitration award*] or civil penalty that has become final by operation of law arising from construction activities within the United States; or
- (c) A judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017.

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

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

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

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

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

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

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

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

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

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

(b) "General contractor" does not mean a specialty contractor or a residential limited contractor.

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

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

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

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

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

(b) "Home improvement" does not include a renovation, remodel, repair or alteration by a residential contractor:

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

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

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

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

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

(11) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.

(12) "Officer" means any of the following persons:

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

(f) A person the board defines by rule as an officer. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(13) "Residential contractor" means a licensed contractor that holds an endorsement as a:

(a) Residential general contractor;

(b) Residential specialty contractor;

(c) Residential limited contractor; or

(d) Residential developer.

(14) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.

(15)(a) "Residential structure" means:

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

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

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

(D) A modular home constructed off-site;

(E) A manufactured dwelling; or

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

(b) "Residential structure" does not mean:

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

(B) Transient lodging;

(C) A residential school or residence hall;

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

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

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

(G) A detention facility as defined in ORS 419A.004;

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

(16) "Responsible managing individual" means an individual who:

(a) Is an owner described in ORS 701.094 or an employee of the business;

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

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

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

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

(17) "Small commercial structure" means:

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

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

(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.

(18) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS 446.395.

(19) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

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

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

SECTION 60. ORS 701.068, as amended by section 39 of this 2011 Act, is amended to read:

701.068. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in ORS 701.081 or 701.084.

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

(3) The surety bond for a residential contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts [*determined*] **ordered paid** by the board [*as provided*] under ORS 701.145. The surety bond for a commercial contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts [*determined*] **ordered paid**

by the board [*as provided*] under ORS 701.146. Bonds filed under this section shall remain in effect for at least one year or until depleted by payments under ORS 701.150, 701.153 and 701.157, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection (4) of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board [*determination issued under ORS 701.145 or 701.146*] **order for payment of a complaint described in ORS 701.140**, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

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

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

[(7) The bond required under this section is for the exclusive purpose of payment of amounts for which the board has determined the surety to have responsibility.]

[(8) Upon issuance of a determination under ORS 701.145 or 701.146 for a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the determination in a manner determined by the board by rule. The notification shall include a list of all board determinations for payment by the surety from the bond.]

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

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

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

(10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay [*an amount determined by the board*] **a final order**, the court may award:

(a) Costs;

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

[(c) Twice the amount that the board determined the surety must pay on the complaint, if the surety arbitrarily and capriciously refused to pay.]

(c) Twice the amount of any damages that the board ordered the surety to pay on the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the board.

SECTION 61. ORS 701.088, as amended by section 40 of this 2011 Act, is amended to read:

701.088. (1) As used in this section:

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

(b) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

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

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

(4) A contractor that supplies a letter of credit or cash deposit under this section is considered to be bonded under ORS 701.068 for purposes of performing rehabilitation work on illegal drug manufacturing sites. A letter of credit or cash deposit that a contractor supplies under this section is considered to be a surety bond issued under ORS 701.068 for purposes of claims involving the contractor's rehabilitation work on illegal drug manufacturing sites. The issuer of a letter of credit described in this section is considered to be a surety for a bond only for purposes of receiving [*notification of a determination*] **notice** under ORS 701.068 or 701.146.

SECTION 62. ORS 701.117, as amended by section 41 of this 2011 Act, is amended to read:

701.117. A contractor shall notify the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor's license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case **or arbitration** directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail.

SECTION 63. ORS 701.133, as amended by sections 49 and 50, chapter 107, Oregon Laws 2010, and section 43 of this 2011 Act, is amended to read:

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for a plaintiff filing a civil action in circuit court. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees **as damages in the final order of the board.**

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

SECTION 64. ORS 701.139, as amended by section 44 of this 2011 Act, is amended to read:

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

(1) A complaint against a residential contractor that is not also endorsed as a commercial contractor involving work on a residential or small commercial structure or an appurtenance to a residential or small commercial structure must be resolved as provided in ORS 701.145.

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor involving work on a small commercial or large commercial structure or an appurtenance to a small commercial or large commercial structure must be resolved as provided in ORS 701.146.

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

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

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

(c) Involving work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

(4) Notwithstanding subsections (1) to (3) of this section and except as provided in section 58 of this 2011 Act, with prior agreement of the complainant and the licensed contractor, a complaint may be resolved by the board through binding arbitration under section 58 of this 2011 Act.

SECTION 65. ORS 701.140, as amended by section 45 of this 2011 Act, is amended to read:

701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the performance, of work that requires a contractor license issued by the Construction Contractors Board. The complaint must be of one or more of the following types:

(1) A complaint against a contractor by the owner of a structure or other real property for the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A complaint against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. **If the complaint is processed under ORS 701.145, the Construction Contractors Board may reduce the amount of the complaint by any amount the complainant owes the contractor.** The board shall process complaints described in this subsection under ORS 701.145 only if:

(a) The owner paid the contractor for that contractor's work subject to this chapter;

(b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement; and

- (c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).
- (3) A complaint against a licensed subcontractor by a licensed contractor for the following:
 - (a) Negligent work;
 - (b) Improper work; or
 - (c) Breach of contract.
- (4) A complaint by a person furnishing labor to a contractor or owed employee benefits by a contractor.
- (5) A complaint, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.
- (6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

SECTION 66. ORS 701.145, as amended by section 46 of this 2011 Act, is amended to read:
701.145. For a complaint described in ORS 701.139 (1) or (3)(a) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The complainant must file the complaint with the Construction Contractors Board in a form prescribed by the board.

(2) The board may suspend processing of the complaint if:

(a) The same facts and issues involved in the complaint have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the dispute described in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

(3) The board may dismiss or close the complaint as established by rule of the board if any of the following conditions apply:

(a) The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.

(b) The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.

(c) The complainant does not permit the contractor against whom the complaint is filed to be present at an on-site investigation made by the board.

(d) The board determines that the contractor against whom the complaint is filed is capable of complying with recommendations made by the board relative to the complaint, but the complainant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a complaint under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

[(d)] (e) The amount in controversy is less than an amount adopted by the board and not more than \$250.

[(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine board jurisdiction over the complaint. The board shall attempt to conduct one or more meetings on-site or by telephone to mediate a dispute. During mediation of a dispute, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.]

[(5) If the parties do not resolve or settle the complaint, except as provided in subsection (6) of this section, the complainant may recover payment from the bond of the contractor only by obtaining:]

[(a) A final judgment against the contractor issued by a court of competent jurisdiction; or]

[(b) An arbitration award against the contractor that a court has reduced to a final judgment.]

[(6) If the complaint is filed under ORS 701.140 (4), the complainant may recover payment from the bond of the contractor as provided in subsection (5)(a) of this section or by obtaining a final order is-

sued by the Bureau of Labor and Industries that states an amount of unpaid wages that the licensed contractor owes under ORS 652.140 or ORS 653.010 to 653.261.]

[(7) For purposes of subsections (5) and (6) of this section, "final" means that the judgment or order has become final by operation or law or on appeal.]

[(8) The board shall send the surety on the contractor bond required under ORS 701.068 a copy of the final judgment or bureau final order, and a copy of a determination issued by the board that the surety must pay the amount stated by the board. A determination issued by the board may not include payment of any attorney fees awarded in the final judgment or bureau final order. The determination issued by the board is an order in other than a contested case proceeding. The determination order is not recordable under ORS 701.153 (1) and (2) to create a lien.]

(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine the validity of the complaint. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. The board may conduct one or more on-site meetings to mediate or investigate the complaint.

(5) Subject to section 58 of this 2011 Act, if the board is unable to resolve the complaint under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:

(a) Issue a proposed default order under ORS 183.417 to become effective only if a party does not request a contested case hearing; or

(b) Refer the matter for hearing.

(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.068.

SECTION 67. ORS 701.146, as amended by section 47 of this 2011 Act, is amended to read:

701.146. For a complaint described in ORS 701.139 (2) or (3)(c) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

(4) Except as provided in this subsection and subsection (7) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant's attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a [*determination that the surety must pay the amount stated by the board. The determination issued by the board is an order in other than a contested case proceeding. The determination shall include*] **proposed order** in the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety. **The board shall issue the proposed order in a form that indicates the surety's maximum liability to the complainant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:**

(a) **Whether the complaint was timely filed with the board as provided in ORS 701.143.**

(b) **Whether the surety received timely notice as provided in subsections (2) and (6) of this section.**

(c) **Whether the complaint is for work subject to this chapter.**

(d) **The extent of the surety's liability to the complainant.**

SECTION 68. ORS 701.149, as amended by section 48 of this 2011 Act, is amended to read:

701.149. (1) [*If the Construction Contractors Board suspends the processing of a complaint because of the complaint having been submitted to a court or arbitrator or because of a court having stayed action on the complaint,*] **An arbitration conducted under section 58 of this 2011 Act must be held before an administrative law judge assigned under ORS 183.605 to 183.690 to act as arbitrator on behalf of the Construction Contractors Board. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.**

(2) **If a party to a complaint under ORS 701.145 requests a contested case hearing, the board shall schedule the hearing.**

(3) The board may adopt rules governing the avoidance of a contested case hearing. The rules may include, but need not be limited to, a limit on the time period during which a party to a complaint may avoid a contested case hearing by filing a court action.

(4) Contested case hearings before the board must be conducted by an administrative law judge assigned under ORS 183.605 to 183.690. Notwithstanding ORS 670.325, the board may delegate authority to the administrative law judge to issue a final order in any matter.

(5) In assigning administrative law judges for arbitration and contested case hearings conducted under this section, the chief administrative law judge of the Office of Administrative Hearings established under ORS 183.605 shall defer to board requests.

(6) If a complainant to the board files a court action, the board may require that the complainant provide status reports on the pending court action [or arbitration]. The board may dismiss or close a complaint filed under ORS 701.139 if the complainant fails to submit status reports on a pending court action [or arbitration].

[(2)] (7) ORS 183.605 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or [referral for] arbitration, to resolve complaints against contractors filed under ORS 701.139.

SECTION 69. ORS 701.150, as amended by section 49 of this 2011 Act, is amended to read:

701.150. [(1) *If a licensed contractor fails to pay a complainant amounts due under a court judgment or under a final order of the Bureau of Labor and Industries, the Construction Contractors Board shall issue a determination stating the amount that a surety must pay the complainant. The surety shall pay the amount required under the determination as follows:*]

[(a) *If the complaint was filed under ORS 701.145, the surety shall pay the amount from a bond required for a residential contractor.*]

[(b) *If the complaint was filed under ORS 701.146, the surety shall pay the amount from a bond required for a commercial contractor.*]

(1) A Construction Contractors Board final order that is not paid by the contractor and that:

(a) Arises out of a complaint filed under ORS 701.145 must be satisfied from a bond required for a residential contractor.

(b) Arises out of a complaint filed under ORS 701.146 must be satisfied from a bond required for a commercial contractor.

(2) If a board final order is not paid by the contractor, the board shall notify the surety on the bond. The surety may not pay on a complaint until the surety receives notice from the board that the complaint is ready for payment.

(3) Notwithstanding ORS 701.153 and 701.157, a bond is not subject to payment for a complaint that is filed more than 14 months after the earlier of:

(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or

(b) The date that the surety canceled the bond.

SECTION 70. ORS 701.153, as amended by section 50 of this 2011 Act, is amended to read:

701.153. (1) If an order of the Construction Contractors Board **that** determines a complaint [against a residential contractor that was filed with the board prior to July 1, 2011, and the order] **under ORS 701.145** becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt [of an order described in subsection (1) of this section], the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order [described in subsection (1) of this section] in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to [a board determination under ORS 701.145] **board order and notice** are satisfied in the following priority in any 90-day period:

(A) Board [determinations] **orders** as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

[(B) If the determinations described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due under board determinations for all other types of residential or small commercial structure complaints filed with the board within that 90-day period may be paid from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.]

(B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure complaints filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

[(4) If the total amount payable under determinations issued by the board for complaints against a residential contractor filed with the board within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for payment, subject to the priorities under this section, the board shall decide how payment of the determined amounts from the bond is to be apportioned.]

[(5) If the total amount payable under determinations issued by the board as a result of complaints that were filed with the board within 90 days after the board receives notice of the first complaint do not exceed the amount of the bond available for payment, those determinations have payment priority over amounts due under determinations resulting from subsequently filed complaints.]

[(6) The total amount paid from a residential contractor bond for costs and interest under all determinations issued by the board under ORS 701.145 may not exceed \$3,000.]

(4) If the total complaints filed with the board against a residential contractor within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for those complaints, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(5) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted.

(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.

SECTION 71. ORS 701.180, as amended by section 51 of this 2011 Act, is amended to read:

701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to [a] mediation or arbitration. *[process in lieu of mediation by the board under ORS 701.145. If the parties do not resolve or settle the dispute pursuant to board mediation under ORS 701.145, unless otherwise provided by law regarding a dispute described under ORS 652.140 or 653.010 to 653.261, the complainant must comply with any contractual provision for mediation or arbitration of the dispute as a condition for obtaining the judgment required under ORS 701.145 (5).]*

SECTION 72. ORS 701.235, as amended by section 52 of this 2011 Act, is amended to read:

701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual relationship between the complainant and the contractor;

(d) Subject to ORS [701.145,] 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and

(e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068.

SECTION 73. (1) Sections 56 and 58 of this 2011 Act and the amendments to ORS 701.005, 701.068, 701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.149, 701.150, 701.153, 701.180 and 701.235 by sections 59 to 72 of this 2011 Act become operative July 1, 2017, and apply to complaints filed with the Construction Contractors Board on or after July 1, 2017.

(2) The board shall complete the processing and resolution of any complaint filed with the board prior to July 1, 2017, and pending on July 1, 2017, in accordance with ORS 701.005, 701.068, 701.088, 701.117, 701.133, 701.139, 701.140, 701.145, 701.146, 701.149, 701.150, 701.153, 701.180 and 701.235 as amended and in effect immediately prior to July 1, 2017. Any determination authorized under this subsection is payable as provided under ORS 701.068, 701.145, 701.146, 701.150 and 701.153 as amended and in effect immediately prior to July 1, 2017.

PROJECT CLEAN SLATE

SECTION 74. Notwithstanding any other provision of law, during the biennium beginning July 1, 2011, the Department of Justice is authorized to grant to Project Clean Slate an amount not to exceed \$300,000 from moneys appropriated to the department, out of the General Fund, for the biennium beginning July 1, 2011.

PUBLIC SAFETY

SECTION 75. Notwithstanding ORS 180.180, the amount of \$6,000,000 is transferred from the Department of Justice Operating Account to the General Fund for general governmental purposes. The transfer shall be made on the effective date of this 2011 Act or July 1, 2011, whichever is later.

DEPARTMENT OF REVENUE

SECTION 76. Notwithstanding and in lieu of section 7 (4), chapter 710, Oregon Laws 2009, the amount of \$2,600,000 is transferred from the Tax Amnesty Fund to the General Fund for general governmental purposes. The transfer shall be made on the effective date of this 2011 Act or July 1, 2011, whichever is later.

SECTION 77. (1) Notwithstanding ORS 293.205 to 293.225, on a date determined by the State Treasurer and the Director of the Department of Revenue, the State Treasurer shall transfer the amount of \$19 million of unexpended moneys in the Common School Fund to the credit of the Senior Property Tax Deferral Revolving Account established under ORS 311.701.

(2) As soon as practicable after June 15, 2013, the Department of Revenue shall transfer the amount of \$19 million, plus interest at a rate equal to the average positive rate of interest earned on all other unexpended moneys from the Common School Fund invested over the period of time beginning with the date of the transfer required under subsection (1) of this section and ending on June 1, 2013, from the Senior Property Tax Deferral Revolving Account to the State Treasurer for deposit in the Common School Fund.

(3) Notwithstanding subsection (2) of this section:

(a) If, on February 15, 2013, the Department of Revenue determines that the balance in the Senior Property Tax Deferral Revolving Account on June 15, 2013, will not be sufficient to make the transfer required under subsection (2) of this section, the Department of Revenue shall, not later than March 15, 2013, submit a report to the Legislative Assembly that:

(A) Explains the impact of the reforms made by chapter __, Oregon Laws 2011 (Enrolled House Bill 2543), on the homestead property tax deferral program;

(B) Includes revenue projections for the program and an assessment of the long-term viability of the program; and

(C) Recommends changes necessary to ensure the long-term viability of the program without further temporary transfers of funds.

(b) If, on June 3, 2013, the Department of Revenue determines that the balance in the Senior Property Tax Deferral Revolving Account will not be sufficient to make the transfer required under subsection (2) of this section, the Department of Revenue shall, as soon as practicable, transfer to the State Treasurer for deposit in the Common School Fund any positive balance in the Senior Property Tax Deferral Revolving Account in excess of the amounts required to be paid to the respective county tax collectors pursuant to ORS 311.676.

(4)(a) Upon receipt of a report pursuant to subsection (3)(a) of this section, the Legislative Assembly shall make a determination of the long-term viability of the homestead property tax deferral program and consider alternatives to the program, including curtailment to ensure the long-term viability of the program and elimination of the program.

(b) If the Department of Revenue determines pursuant to subsection (3)(b) of this section that there are insufficient funds to make the transfer required under subsection (2) of this section, the Legislative Assembly shall, not later than June 15, 2013, appropriate to the credit of the Common School Fund:

(A) An amount equal to the difference between the amount required to be transferred under subsection (2) of this section and any amount actually transferred pursuant to subsection (3)(b) of this section; or

(B) If there is no positive balance in the Senior Property Tax Deferral Revolving Account as described in subsection (3)(b) of this section, the amount required under subsection (2) of this section.

OREGON GOVERNMENT ETHICS COMMISSION

SECTION 78. Section 8b, chapter 877, Oregon Laws 2007, as amended by section 24, chapter 68, Oregon Laws 2009, is amended to read:

Sec. 8b. The amendments to ORS 171.772 by section 8a, chapter 877, Oregon Laws 2007, become operative January 1, [2013] 2015.

SECTION 79. Section 9e, chapter 877, Oregon Laws 2007, as amended by section 25, chapter 68, Oregon Laws 2009, is amended to read:

Sec. 9e. The amendments to ORS 244.290 by section 9d, chapter 877, Oregon Laws 2007, become operative January 1, [2013] 2015.

LEGISLATIVE ASSEMBLY

SECTION 80. Notwithstanding ORS 171.072 (4), a member of the Legislative Assembly may not receive an allowance for expenses incurred in the performance of official duties during any period in the month of June 2011 when the Legislative Assembly is not in session.

SECTION 81. ORS 171.305 is amended to read:

171.305. (1) The proceeds from the sale of an edition or publication made pursuant to ORS 171.275 shall be deposited in the State Treasury to the credit of a revolving account for the use of the Legislative Counsel Committee in publishing and distributing future editions or publications. The account, to be known as the ORS Revolving Account, is continuously appropriated to the committee for this purpose.

(2) There shall also be deposited to the credit of the ORS Revolving Account any moneys received through the sale of a medium of publication belonging to the Legislative Counsel Committee or any moneys received by the committee in connection with the use of a medium, or material printed with a medium pursuant to ORS 171.295.

(3) The Legislative Counsel Committee, from time to time, may cause to be transferred from the ORS Revolving Account to the General Fund the moneys that the committee considers unnecessary for use in publishing and distributing future editions or publications.

(4) Any unexpended and unobligated balance in the ORS Revolving Account in excess of [\$400,000] **\$500,000** as of July 1 of any odd-numbered year, as certified by the Legislative Counsel, shall be transferred from the account to the General Fund to be available for general governmental expenditures.

HUMAN SERVICES

SECTION 82. If House Bill 2049 becomes law, section 6, chapter ___, Oregon Laws 2011 (Enrolled House Bill 2049), is repealed.

SECTION 83. Notwithstanding ORS 412.124, for the biennium beginning July 1, 2011, the Department of Human Services may provide aid described in ORS 412.124 subject to available funding as approved in the legislatively adopted or legislatively approved budget for the department.

(2) As used in this section:

(a) "Legislatively adopted budget" has the meaning given that term in ORS 291.002.

(b) "Legislatively approved budget" has the meaning given that term in ORS 291.002.

SECTION 84. Section 19, chapter 827, Oregon Laws 2009, is amended to read:

Sec. 19. Notwithstanding section 24, chapter 736, Oregon Laws 2003, for the biennium beginning July 1, [2009] **2011**, the Department of Human Services may limit *[the administrative cost and property expense components of the allowable costs that are reimbursed pursuant to section 24 (4)(f), chapter 736, Oregon Laws 2003]* **reimbursement paid to Medicaid-certified long term care facilities to the rates in effect on June 30, 2011**, in accordance with the legislatively adopted budget.

SECTION 85. Section 20, chapter 827, Oregon Laws 2009, is amended to read:

Sec. 20. Section 19 *[of this 2009 Act]*, **chapter 827, Oregon Laws 2009**, is repealed on June 30, [2011] **2013**.

SECTION 86. (1) Notwithstanding ORS 427.340, during the period beginning July 1, 2012, and ending June 30, 2013, the Department of Human Services may transfer from the Community Housing Trust Account established by ORS 427.340 to the Department of Human Services Account established by ORS 409.060 no more than \$6,950,134.

(2) Moneys transferred from the Community Housing Trust Account under subsection (1) of this section may be used only for services provided to children and adults with intellectual or other developmental disabilities.

EDUCATION

SECTION 87. Section 5, chapter 755, Oregon Laws 2009, is amended to read:

Sec. 5. Section 4, **chapter 755, Oregon Laws 2009**, [of this 2009 Act] is repealed on January 2, 2012.

(2) Any moneys remaining in the Oregon School Facilities Task Force Fund on January 2, 2012, that are unexpended, unobligated and not subject to any conditions shall [revert to the General Fund] **be transferred to the Administrative Services Economic Development Fund established under ORS 461.540.**

ECONOMIC DEVELOPMENT

SECTION 88. Section 5, chapter 93, Oregon Laws 2010, as amended by section 8, chapter 93, Oregon Laws 2010, is repealed.

SECTION 89. Section 9, chapter 93, Oregon Laws 2010, is amended to read:

Sec. 9. Sections 2 to [5 of this 2010 Act] **4, chapter 93, Oregon Laws 2010**, are repealed on June 30, 2013.

SECTION 90. Section 10, chapter 93, Oregon Laws 2010, is amended to read:

Sec. 10. (1) All moneys remaining in the Tax Enforcement Fund on [June 30, 2011,] **the effective date of this 2011 Act** shall be transferred to the General Fund.

(2) All moneys remaining in the Building Opportunities for Oregon Small Business Today Account on June 30, 2013, shall be transferred to the General Fund.

[3) All moneys remaining in the Tax Enforcement Fund on June 30, 2013, shall be transferred to the General Fund.]

ADMINISTRATIVE

SECTION 91. Notwithstanding ORS 283.076, the amount of \$9,101,000 is transferred from the Oregon Department of Administrative Services Operating Fund to the General Fund for general governmental purposes. The transfer shall be made on the effective date of this 2011 Act, or July 1, 2011, whichever is later.

OREGON HEALTH AUTHORITY

SECTION 92. ORS 475.304 is amended to read:

475.304. (1) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the authority that includes:

- (a) The name of the person responsible for the marijuana grow site;
- (b) The address of the marijuana grow site;
- (c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and
- (d) Any other information the authority considers necessary.

(2) The authority shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the

property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

(8) The authority may adopt rules imposing a fee in an amount established by the authority for registration of a marijuana grow site under this section.

SECTION 93. Notwithstanding ORS 431.832 (2), the amount of \$1,733,000 is transferred from the Tobacco Use Reduction Account to the General Fund for general governmental purposes. The transfer shall be made on the effective date of this 2011 Act or July 1, 2011, whichever is later.

LOTTERY

SECTION 94. (1) Notwithstanding ORS 461.558, the lottery ending balance for the biennium beginning July 1, 2011, shall not be transferred as provided in ORS 461.558 (2). The lottery ending balance for the biennium beginning July 1, 2011, shall be maintained in the Administrative Services Economic Development Fund.

(2) As used in this section, "lottery ending balance" has the meaning given that term in ORS 461.558.

INSURANCE FUND

SECTION 95. Notwithstanding ORS 30.282 and 278.425, the amount of \$5,000,000 is transferred from the Insurance Fund to the General Fund for general governmental purposes. The transfer shall be made on the effective date of this 2011 Act or July 1, 2011, whichever is later.

TRANSFERS

SECTION 96. The transfers described in sections 27, 75, 76, 91, 93 and 95 of this 2011 Act shall be made from moneys maintained, on the effective date of this 2011 Act, in the funds or accounts from which the transfers are made.

CAPTIONS AND EMERGENCY CLAUSE

SECTION 97. The unit captions used in this 2011 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2011 Act.

SECTION 98. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate June 29, 2011

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 30, 2011

.....
Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

.....
Kate Brown, Secretary of State