

**A-Engrossed**  
**Senate Bill 557**

Ordered by the Senate April 25  
Including Senate Amendments dated April 25

Sponsored by Senator BOQUIST

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Abolishes State Landscape Contractors Board. Transfers duties, functions and powers of State Landscape Contractors Board to Construction Contractors Board. Makes transfer operative January 1, 2014. Appropriates transferred moneys.]*

*[Creates licensing exemption for landscape contracting businesses having less than threshold amount of gross revenue.]*

**Exempts work by landscape contracting business valued at less than \$500 from written contract requirements.**

**Revises penalty provisions for violation of statutes and rules related to landscape construction professionals.**

**Establishes Landscape Construction Professionals Task Force.**

Declares emergency, effective *[July 1, 2013]* **on passage.**

**A BILL FOR AN ACT**

1  
2 Relating to landscaping; creating new provisions; amending ORS 671.603, 671.610, 671.625, 671.660,  
3 and 671.997; repealing ORS 671.676; and declaring an emergency.

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

5 **SECTION 1.** ORS 671.603 is amended to read:

6 671.603. (1) A landscape construction professional or person operating as a landscape contract-  
7 ing business shall notify the State Landscape Contractors Board of a change of address for the  
8 professional or business that occurs while the professional or business is licensed by the board or  
9 within one year after a license expires. The landscape construction professional or landscape con-  
10 tracting business shall ensure that the board receives notice of the change of address no later than  
11 the *[10th]* **30th** day after the change of address occurs.

12 (2) Initial notice of a contested case or arbitration directed by the board to the last-known ad-  
13 dress of record for a landscape construction professional or landscape contracting business is con-  
14 sidered delivered to the professional or business when deposited in the United States mail and sent  
15 registered, certified or post office receipt secured. Any other communication directed by the board  
16 to the last-known address of record for a landscape construction professional or landscape con-  
17 tracting business is considered delivered to the professional or business when deposited in the  
18 United States mail, regular mail.

19 **SECTION 2.** ORS 671.625 is amended to read:

20 671.625. (1) The State Landscape Contractors Board shall by rule adopt minimum standards for  
21 written contracts and billings of the landscape contracting businesses. The standards shall set forth  
22 requirements for information that must be contained in contracts and billings. The information re-  
23 quired shall be any information the board determines is necessary to provide protection for con-

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

1 sumers of the services and materials provided by landscape contracting businesses.

2 (2) **Any** work by a landscape contracting business subject to ORS 671.510 to 671.760 [*shall*  
3 *only*] **that is valued at \$500 or more must** be performed subject to a written contract. Any con-  
4 tract or billing for such work must conform to the standards adopted under subsection (1) of this  
5 section.

6 (3) A contract that does not substantially comply with this section may not be enforced by a  
7 landscape contracting business in any court or other proceedings within this state.

8 **SECTION 3.** ORS 671.660 is amended to read:

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

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

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

17 (4) When a landscape contracting business renews its license, the business must submit the  
18 names of all employees who are licensed landscape construction professionals.

19 (5) When a person renews a landscape construction professional license, the person must[:]

20 [(a) *Submit*] **submit** the name of the employer if the person is currently performing landscaping  
21 work.[: *and*]

22 [(b) *Demonstrate that the person has complied with the continuing education requirement adopted*  
23 *by the board.*]

24 **SECTION 4.** ORS 671.997 is amended to read:

25 671.997. (1) Except as provided in subsection [(4)] **(6)** of this section, a person who violates any  
26 provision of ORS 671.510 to 671.760 or a rule adopted pursuant to ORS 670.310, 670.605 or 671.670  
27 shall forfeit and pay to the State Landscape Contractors Board a civil penalty in an amount deter-  
28 mined by the board of not more than \$2,000 for each offense.

29 **(2) In imposing a penalty under subsection (1) of this section, the board shall consider**  
30 **the following factors:**

31 **(a) The past history of the person incurring a penalty in taking all feasible steps or pro-**  
32 **cedures necessary or appropriate to correct any violation.**

33 **(b) Any prior violations of ORS 671.510 to 671.760 or a rule adopted under ORS 670.310,**  
34 **670.605 or 671.670.**

35 **(c) The economic and financial conditions of the person incurring a penalty.**

36 **(3) If the person incurring a penalty under this section is otherwise in compliance with**  
37 **the licensing requirements of ORS 671.510 to 671.760 and the penalty being imposed is not for**  
38 **a violation of any backflow assembly installation requirement under ORS 671.615 or rules**  
39 **adopted under ORS 671.615, the penalty imposed for the first or second occurrence of a par-**  
40 **ticular violation may be remitted or mitigated on condition that:**

41 **(a) The particular violation not continue or occur after a certain period not to exceed 15**  
42 **days; or**

43 **(b) The person incurring the penalty participate in an educational program related to the**  
44 **professional competency of landscape construction professionals to be determined by the**  
45 **board.**

1        [(2)] (4) [*The board shall impose civil penalties under this section as provided in ORS 183.745*]

2        **Any civil penalties imposed under this section shall be imposed as provided in ORS 183.745.**

3        [(3)] (5) The provisions of this section are in addition to and not in lieu of any other penalty  
4 or sanction provided by law.

5        [(4)] (6) If a landscape contracting business commits an act described under ORS 671.610 (5), the  
6 board [*shall*] **may** impose penalties and sanctions on both the landscape contracting business to  
7 which the contract is awarded and the landscape contracting business that awards the contract as  
8 follows:

- 9        (a) A civil penalty of not less than \$500 nor more than \$1,000 for a first offense;
- 10       (b) A civil penalty of not less than \$1,000 nor more than \$2,000 for a second offense;
- 11       (c) Suspension of license or refusal to reissue license for six months for a third offense;
- 12       (d) Revocation of license for three years for a fourth offense; and
- 13       (e) Permanent revocation of the landscape contracting business's license for a fifth offense.

14        **SECTION 5.** ORS 671.610 is amended to read:

15        671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape  
16 Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape con-  
17 struction professional or landscape contracting business that does any of the following:

- 18        (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material  
19 misrepresentation.
- 20        (b) Makes a material misrepresentation about the quality of any material or service the person  
21 provides.
- 22        (c) Performs defective work.
- 23        (d) Furnishes defective materials.
- 24        (e) Makes misleading statements when advertising services or materials.
- 25        (f) Violates a provision of ORS 671.510 to 671.760.
- 26        (g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termi-  
27 nation, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS  
28 671.690.
- 29        (h) Fails to maintain public liability, personal injury and property damage insurance as required  
30 by ORS 671.565 throughout a licensing period.
- 31        (i) Fails to comply with ORS 671.527 or 671.562.
- 32        (j) Fails to provide evidence of workers' compensation coverage as described in ORS 671.565.
- 33        (k) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.
- 34        (L) Performs work for which a permit is required under the state building code without obtain-  
35 ing the required permit, if the work results in the filing of a claim with the board.
- 36        (m) Violates a rule or order of the board.
- 37        (n) Refuses to comply with a subpoena issued by the board.
- 38        (o) Fails to pay in full any amount owed to a claimant under a final order of the board or an  
39 arbitration award, or under a judgment rendered in this or any other state.
- 40        (p) Does not make payment, including any interest due, for labor or materials contracted for by  
41 the person pursuant to a contract for a public improvement within 90 days after the date the person  
42 receives payment from a public contracting agency or, if the person is a subcontractor, from the  
43 contractor.
- 44        (q) Engages in conduct as a landscape construction professional or landscape contracting busi-  
45 ness that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

1 (r) Fails to comply with the requirements of ORS 652.120.

2 (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.375,  
3 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or  
4 164.415, provided that the facts supporting the conviction and all intervening circumstances make  
5 the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS  
6 670.280.

7 (2) The board may suspend or refuse to renew the license of a landscape construction profes-  
8 sional or landscape contracting business without prior hearing if, after investigating and setting  
9 forth in writing the facts supporting the action, the board determines that continued activity by the  
10 landscape construction professional or landscape contracting business poses an imminent threat of  
11 serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew un-  
12 der this subsection include, but are not limited to:

13 (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

14 (b) The lack of public liability, personal injury or property damage insurance required under  
15 ORS 671.565;

16 (c) The lack of workers' compensation insurance that is required of the licensee under ORS  
17 671.562;

18 (d) The hiring of employees while licensed as exempt under ORS 671.525;

19 (e) Conduct as a landscape construction professional or a landscape contracting business that  
20 is dishonest;

21 (f) Operation of a landscape contracting business that does not employ at least one licensed  
22 landscape construction professional; or

23 (g) The failure to notify the board of any unpaid court judgment, arbitration award or adminis-  
24 trative agency final order as required by ORS 671.563.

25 (3) A person whose license is suspended or refused renewal under subsection (2) of this section  
26 may request a hearing within 90 days after receiving the notice of the suspension or refusal to re-  
27 new. Except as provided in this subsection, the board shall give a contested case hearing requested  
28 under this subsection priority over other hearings and schedule the hearing for the earliest practi-  
29 cable date. If a citation is issued to the person and the order of suspension or refusal to renew will  
30 terminate by its terms if a court renders a final judgment regarding the citation in favor of the  
31 person, the person may request that the board hold the requested contested case hearing in abey-  
32 ance until after the court has rendered a final judgment.

33 (4) A person whose license is revoked under this section is not eligible to apply for a license  
34 under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

35 (5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting  
36 business, and may impose a civil penalty, all as provided under ORS 671.997 [(4)] (6), if the board  
37 determines, after notice and opportunity for a hearing, that the landscape contracting business was  
38 working with other landscape contracting businesses on the same task and work site where one of  
39 the landscape contracting businesses is licensed as an exempt independent contractor under ORS  
40 671.525 (2)(b) and the total number of landscape contracting businesses working on the task ex-  
41 ceeded:

42 (a) Two sole proprietors;

43 (b) One partnership;

44 (c) One corporation; or

45 (d) One limited liability company.

1 (6) The board shall provide by rule a process and criteria that must be met for restoration of  
2 a license that has not been permanently revoked.

3 **SECTION 6. ORS 671.676 is repealed.**

4 **SECTION 7. (1) The Landscape Construction Professionals Task Force is established,**  
5 **consisting of at least seven members appointed as follows:**

6 (a) **The President of the Senate shall appoint two members from among members of the**  
7 **Senate, one from the majority party and one from the minority party.**

8 (b) **The Speaker of the House of Representatives shall appoint two members from among**  
9 **members of the House of Representatives, one from the majority party and one from the**  
10 **minority party.**

11 (c) **The Governor shall appoint at least three members as follows:**

12 (A) **At least one member of the State Landscape Contractors Board;**

13 (B) **At least one landscape construction professional; and**

14 (C) **At least one other person knowledgeable about the licensing and regulation of land-**  
15 **scape construction professionals.**

16 (2) **The task force shall:**

17 (a) **Review the licensure examination requirements for landscape construction profes-**  
18 **sionals under ORS 671.510 to 671.760 and rules adopted under ORS 671.510 to 671.760;**

19 (b) **Make recommendations to the State Landscape Contractors Board on any changes**  
20 **to the board's administrative rules and recommendations to the Legislative Assembly on any**  
21 **changes to statutes that are appropriate and necessary to ensure that licensure examina-**  
22 **tions are designed to demonstrate that the applicant has the necessary knowledge and skills**  
23 **to exercise the responsibilities of a landscape construction professional; and**

24 (c) **Make recommendations to the Legislative Assembly on whether the State Landscape**  
25 **Contractors Board should have its power transferred to the Construction Contractors Board.**

26 (3) **A majority of the members of the task force constitutes a quorum for the transaction**  
27 **of business.**

28 (4) **Official action by the task force requires the approval of a majority of the members**  
29 **of the task force.**

30 (5) **The task force shall elect one of its members to serve as chairperson.**

31 (6) **If there is a vacancy for any cause, the appointing authority shall make an appoint-**  
32 **ment to become immediately effective.**

33 (7) **The task force shall meet at times and places specified by the call of the chairperson**  
34 **or of a majority of the members of the task force.**

35 (8) **The task force may adopt rules necessary for the operation of the task force.**

36 (9) **The task force shall make a report based on its recommendations to the Legislative**  
37 **Assembly no later than the date of the convening of the 2014 regular session of the Legisla-**  
38 **tive Assembly as specified in ORS 171.010, and the task force may file proposed legislative**  
39 **measures with the Legislative Counsel in the manner allowed by both houses of the Legisla-**  
40 **tive Assembly.**

41 (10) **The Legislative Administration Committee shall provide staff support to the task**  
42 **force.**

43 (11) **Members of the task force who are not members of the Legislative Assembly are not**  
44 **entitled to compensation, but may be reimbursed for actual and necessary travel and other**  
45 **expenses incurred by them in the performance of their official duties in the manner and**

1 amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions  
2 of the task force shall be paid out of funds appropriated to the Legislative Administration  
3 Committee for purposes of the task force.

4 (12) All agencies of state government, as defined in ORS 174.111, are directed to assist  
5 the task force in the performance of its duties and, to the extent permitted by laws relating  
6 to confidentiality, to furnish such information and advice as the members of the task force  
7 consider necessary to perform their duties.

8 SECTION 8. Section 7 of this 2013 Act is repealed on the date of the convening of the 2014  
9 regular session of the Legislative Assembly as specified in ORS 171.010.

10 SECTION 9. This 2013 Act being necessary for the immediate preservation of the public  
11 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
12 on its passage.  
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