

Senate Bill 557

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 **as introduced**.

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.

Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to landscaping; creating new provisions; amending ORS 182.454, 183.457, 205.125, 205.126,
3 279C.365, 479.940, 571.135, 571.250, 670.304, 670.306, 670.700, 671.520, 671.525, 671.530, 671.540,
4 671.550, 671.555, 671.557, 671.560, 671.562, 671.563, 671.565, 671.568, 671.570, 671.571, 671.572,
5 671.574, 671.575, 671.578, 671.590, 671.595, 671.600, 671.603, 671.605, 671.610, 671.614, 671.615,
6 671.617, 671.625, 671.650, 671.660, 671.670, 671.676, 671.681, 671.690, 671.695, 671.700, 671.703,
7 671.707, 671.710, 671.750 and 671.997; repealing ORS 671.630 and 671.655; appropriating money;
8 and declaring an emergency.

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

ABOLISH AND TRANSFER

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11
12
13 **SECTION 1. (1) The State Landscape Contractors Board is abolished. On the operative**
14 **date of this section, the tenure of office of the State Landscape Contractors Board and of**
15 **the administrator of the State Landscape Contractors Board ceases.**

16 **(2) All the duties, functions and powers of the State Landscape Contractors Board are**
17 **imposed upon, transferred to and vested in the Construction Contractors Board.**

RECORDS, PROPERTY, EMPLOYEES

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19
20
21 **SECTION 2. (1) The administrator of the State Landscape Contractors Board shall:**

22 **(a) Deliver to the administrator of the Construction Contractors Board all records and**
23 **property within the jurisdiction of the administrator that relate to the duties, functions and**
24 **powers transferred by section 1 of this 2013 Act; and**

25 **(b) Transfer to the Construction Contractors Board those employees engaged primarily**
26 **in the exercise of the duties, functions and powers transferred by section 1 of this 2013 Act.**

27 **(2) The administrator of the Construction Contractors Board shall take possession of the**
28 **records and property, and shall take charge of the employees and employ them in the exer-**
29 **cise of the duties, functions and powers transferred by section 1 of this 2013 Act, without**

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 reduction of compensation but subject to change or termination of employment or compen-
 2 sation as provided by law.

3 (3) The Governor shall resolve any dispute between the State Landscape Contractors
 4 Board and the Construction Contractors Board relating to transfers of records, property and
 5 employees under this section, and the Governor's decision is final.

6 7 UNEXPENDED REVENUES

8
9 SECTION 3. The State Landscape Contractors Board shall close the account established
 10 by the board under ORS 182.470 and shall transfer the unexpended balances of the account
 11 and any investments made by the board under ORS 182.470 to the State Treasurer. The State
 12 Treasurer shall sell any investments transferred by the State Landscape Contractors Board
 13 and shall credit the unexpended account balance and proceeds from investments transferred
 14 by the State Landscape Contractors Board to the Construction Contractors Landscape Fund
 15 established under section 4 of this 2013 Act. To the extent practicable, during the biennium
 16 ending June 30, 2015, the Construction Contractors Board shall expend moneys credited to
 17 the Construction Contractors Landscape Fund in a manner consistent with any amounts and
 18 expenditure classifications described in the biennial budget of the State Landscape Contrac-
 19 tors Board that was in effect on the operative date of this section.

20 SECTION 4. The Construction Contractors Landscape Fund is established in the State
 21 Treasury, separate and distinct from the General Fund. Interest earned by the Construction
 22 Contractors Landscape Fund shall be credited to the fund. Moneys in the fund are contin-
 23 uously appropriated to the Construction Contractors Board for the purpose of administering
 24 and enforcing ORS 671.510 to 671.760.

25 SECTION 5. The Construction Contractors Landscape Fund is abolished. On the operative
 26 date of this section, the State Treasurer shall transfer any unexpended balance of the Con-
 27 struction Contractors Landscape Fund to the General Fund.

28 SECTION 6. Section 5 of this 2013 Act becomes operative July 1, 2015.

29 30 ACTION, PROCEEDING, PROSECUTION

31
32 SECTION 7. The transfer of duties, functions and powers to the Construction Contrac-
 33 tors Board by section 1 of this 2013 Act, the amendments to ORS 182.454, 183.457, 205.125,
 34 205.126, 279C.365, 479.940, 571.135, 571.250, 670.304, 670.306, 670.700, 671.520, 671.525, 671.530,
 35 671.540, 671.550, 671.555, 671.557, 671.560, 671.562, 671.563, 671.565, 671.568, 671.570, 671.571,
 36 671.572, 671.574, 671.575, 671.578, 671.590, 671.595, 671.600, 671.603, 671.605, 671.610, 671.614,
 37 671.615, 671.617, 671.625, 671.650, 671.660, 671.670, 671.676, 671.681, 671.690, 671.695, 671.700,
 38 671.703, 671.707, 671.710, 671.750 and 671.997 by sections 12 to 52 and 54 to 64 of this 2013 Act
 39 and the repeal of ORS 671.630 and 671.655 by section 53 of this 2013 Act do not affect any
 40 action, proceeding or prosecution involving or with respect to such duties, functions and
 41 powers begun before and pending at the time of the transfer, except that the Construction
 42 Contractors Board is substituted for the State Landscape Contractors Board in the action,
 43 proceeding or prosecution.

44 45 LIABILITY, DUTY, OBLIGATION

1 **State Landscape Contractors Board, the reference is considered to be a reference to the**
2 **Construction Contractors Board or an officer or employee of the Construction Contractors**
3 **Board.**

4
5 **AGENCY NAME CHANGE**
6

7 **SECTION 11. For the purpose of harmonizing and clarifying statutory law, the Legislative**
8 **Counsel may substitute for words designating the “State Landscape Contractors Board” or**
9 **its officers, wherever they occur in statutory law, words designating the “Construction**
10 **Contractors Board” or its officers.**

11
12 **LANDSCAPE CONTRACTORS LAW CHANGES**
13

14 **SECTION 12. ORS 671.520 is amended to read:**

15 671.520. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

16 (1) “Landscape construction professional” means an individual who for compensation or with the
17 intent to be compensated performs or supervises activities requiring the art, ability, experience,
18 knowledge, science and skill to:

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

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

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

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

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

25 (2) “Landscape contracting business” means a business that for compensation or with the intent
26 to be compensated arranges, submits a bid, or otherwise offers or contracts, for the performance of
27 activities described in subsection (1) of this section.

28 (3) “Licensee” means a person that is licensed under ORS 671.510 to 671.760 as a landscape
29 construction professional or landscape contracting business.

30 (4) “Nursery stock” means nursery stock:

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

33 (b) As defined by the [*State Landscape Contractors Board*] **Construction Contractors Board**
34 by rule.

35 (5) “Ornamental water features” means fountains, ponds, waterfalls, man-made streams and other
36 decorative water-related constructions as identified by the board by rule.

37 **SECTION 13. ORS 671.525 is amended to read:**

38 671.525. (1) An applicant for a landscape contracting business license must qualify as an inde-
39 pendent contractor, under ORS 670.600, to be licensed with the [*State Landscape Contractors*
40 *Board*] **Construction Contractors Board.**

41 (2) The board shall establish two classes of independent contractor licensees:

42 (a) The nonexempt class is composed of the following entities:

43 (A) Sole proprietorships, partnerships, corporations and limited liability companies with one or
44 more employees; and

45 (B) Partnerships, corporations and limited liability companies with more than two partners,

1 corporate officers or members if any of the partners, officers or members are not part of the same
 2 family and related as parents, spouses, siblings, children, grandchildren, sons-in-law or daughters-
 3 in-law.

4 (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and
 5 limited liability companies that do not qualify as nonexempt.

6 (3) All partnerships, corporations and limited liability companies applying for a landscape con-
 7 tracting business license must have a federal tax identification number.

8 (4) If a licensee who qualifies under subsection (2)(b) of this section hires one or more employ-
 9 ees, or falls into any of the categories set out in subsection (2)(a)(B) of this section, the licensee is
 10 subject to penalties under ORS 671.997 and must submit proof that the licensee qualifies under
 11 subsection (2)(a) of this section.

12 (5) The decision of the board that a licensee is an independent contractor applies only when the
 13 licensee is performing work of the nature described in ORS 671.520 and 671.530.

14 **SECTION 14.** ORS 671.530 is amended to read:

15 671.530. (1) **As used in this section, “officer” and “owner” have the meanings given those**
 16 **terms in ORS 671.607.**

17 [(1)] (2) **Except as provided in this subsection,** a person may not operate as a landscape
 18 construction professional in this state without a valid landscape construction professional license
 19 issued pursuant to ORS 671.560. **The license requirement established by this subsection applies**
 20 **only if the person is employed by a landscape contracting business that has, or is required**
 21 **under subsection (4) of this section to have, a landscape contracting business license.**

22 [(2)] (3) A person may not represent in any manner that the person is a **licensed** landscape
 23 construction professional unless the person has a valid landscape construction professional license
 24 issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is not limited to:

25 (a) Using the title of **licensed** landscape contractor, **licensed** landscape construction profes-
 26 sional, **licensed** landscape gardener or **licensed** landscaper or any other title using a form of the
 27 word “landscape” that indicates or tends to indicate that the person is a **licensed** landscape con-
 28 struction professional; and

29 (b) Using any sign, card or device that indicates or tends to indicate that the person is a **li-**
 30 **icensed** landscape construction professional.

31 [(3)] (4) **Except as provided in this subsection,** a person may not operate as a landscape
 32 contracting business in this state unless the person has a valid landscape contracting business li-
 33 cense issued pursuant to ORS 671.560. **A landscape contracting business license is required only**
 34 **if:**

35 (a) **An owner or officer of the business was an owner or officer of a business that had**
 36 **gross receipts from landscaping activities in any month of the prior calendar year that ex-**
 37 **ceeded \$2,000;**

38 (b) **An owner or officer of the business was an owner or officer of a business that had**
 39 **gross receipts from landscaping activities in the prior calendar year that exceeded \$12,000;**
 40 **or**

41 (c) **The business enters into contracts to perform landscaping activities for which the**
 42 **business is to receive compensation in excess of \$2,000 in any month or \$12,000 in the cal-**
 43 **endar year.**

44 [(4)] (5) A person may not advertise or represent in any manner that the person is a **licensed**
 45 landscape contracting business unless the person has a valid landscape contracting business license

1 issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is not limited to:

2 (a) Using the title of **licensed** landscape business, **licensed** landscaping business or **licensed**
3 landscape contracting business; and

4 (b) Using any title, sign, card or device that indicates or tends to indicate that the person is a
5 **licensed** landscape contracting business.

6 *[(5) A landscape maintenance business may use a form of the word "landscape" in the title of the*
7 *business only if the title clearly indicates the maintenance nature of the business. For purposes of this*
8 *subsection, the term "landscape gardening" does not indicate the maintenance nature of a landscape*
9 *maintenance business.]*

10 (6) *[A landscape construction professional may perform landscaping work only while in the employ*
11 *of a landscape contracting business licensed and bonded as required by ORS 671.510 to 671.760.]* If
12 *[the]* a landscape construction professional is the sole proprietor of a **landscape contracting busi-**
13 **ness required under ORS 671.510 to 671.760 to be licensed and bonded**, the landscape con-
14 struction professional must also obtain a license as a landscape contracting business.

15 **(7) Subsection (4) of this section does not prohibit any business from voluntarily obtain-**
16 **ing a landscape contracting business license.**

17 **(8) This section does not exempt any person installing backflow assemblies from compli-**
18 **ance with the licensing requirement established in ORS 671.615.**

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

20 671.540. (1) Except as provided in subsection (2) of this section, *[ORS 671.510 to 671.760 and*
21 *671.990 (2)]* **the licensing requirements in ORS 671.530** do not apply to:

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

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

26 *[(c) Landscaping work performed by a landscape maintenance business if:]*

27 *[(A) the landscaping work is performed for a customer that in a calendar year receives primarily*
28 *landscape maintenance services from the business;]*

29 *[(B) The value of all labor, materials or other items supplied for landscaping work at a job site*
30 *does not exceed \$500 in a calendar year; and]*

31 *[(C) The landscaping work is of a casual, minor or inconsequential nature, as those terms are de-*
32 *defined by the State Landscape Contractors Board by rule.]*

33 **(c) The performance of landscape maintenance work.**

34 (d) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by
35 a person or business licensed with the Construction Contractors Board **as a construction con-**
36 **tractor.**

37 (e) Rough grading of plots and areas of land performed in conjunction with new or remodeling
38 construction if performed by a person or business licensed with the Construction Contractors Board
39 **as a construction contractor.**

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

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

6 (h) A residential general contractor licensed under ORS chapter 701 who performs landscaping
7 work if the total value of the landscaping is less than \$2,500 per residential dwelling and the land-
8 scaping work is performed on residential property for which the contractor is under contract for the
9 construction of a new dwelling. The exception provided by this paragraph does not apply to the
10 performance of irrigation work by a residential general contractor. The [*State Landscape*
11 *Contractors*] board shall revise the amount specified in this paragraph every five years, beginning
12 in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Con-
13 sumers for All Items as published by the Bureau of Labor Statistics of the United States Department
14 of Labor.

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

20 (j) A person engaged in making plans or drawings for the selection, placement or use of plants
21 or other site features, unless the plans or drawings are for the purpose of providing construction
22 details and specifications.

23 (k) Use by a person other than a landscape construction professional of the title "landscape
24 designer" when engaged in making plans or drawings described in paragraph (j) of this subsection.

25 (L) A person providing recommendations or written specifications for soil amendments or
26 planting media if the recommendations or specifications are solely for the purpose of plant installa-
27 tion.

28 (m) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in superin-
29 tending installation work on piping for an irrigation system designed by a landscape contracting
30 business or by a person registered under ORS 671.310 to 671.459.

31 (n) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in superintend-
32 ing repair or maintenance work on piping for an irrigation system.

33 (o) A journeyman plumber licensed under ORS chapter 693 when performing an installation for
34 a plumbing contractor described in paragraph (m) of this subsection or performing repair or main-
35 tenance work on piping for an irrigation system.

36 (p) An employee, as defined in ORS 657.015, of a residential general contractor licensed under
37 ORS chapter 701 when performing work that the contractor may perform under paragraph (h) or (i)
38 of this subsection.

39 (q) An employee of a licensed landscape contracting business when performing work for the
40 business under the direct supervision of a licensed landscape construction professional.

41 (r) An employee of a worker leasing company or temporary service provider, both as defined in
42 ORS 656.850, when performing work for a licensed landscape contracting business under the direct
43 supervision of a licensed landscape construction professional.

44 (2) ORS 671.530 [(2), (4)] (3) and (5) [*apply*] **applies** to a person described under subsection (1)
45 of this section.

1 **SECTION 16.** ORS 671.550 is amended to read:

2 671.550. (1) The [*State Landscape Contractors Board*] **Construction Contractors Board** may
3 inquire into and inspect:

4 (a) Any services performed or materials furnished by a licensee under ORS 671.510 to 671.760.

5 (b) The financial records of a person who it reasonably believes is operating in violation of ORS
6 671.530.

7 (c) The services performed or materials furnished by a person who it reasonably believes is op-
8 erating in violation of ORS 671.530.

9 (2) Except when used for legal action or to determine a claim described in ORS 671.695, the
10 information obtained by an inspection authorized by this section is confidential. However, the board
11 shall furnish copies of any inspection to the licensee or other person that is subjected to an in-
12 spection.

13 **SECTION 17.** ORS 671.555 is amended to read:

14 671.555. (1) The [*State Landscape Contractors Board*] **Construction Contractors Board** may
15 investigate the activities of any person engaged in the landscape contracting business to determine
16 compliance with ORS 671.510 to 671.760.

17 (2) With the approval of the city or county, the board may conduct investigations with city or
18 county inspectors, provided that the city or county is reimbursed by the board for the costs of such
19 investigations.

20 (3) Any inspector or investigator authorized by the board to determine compliance with ORS
21 671.510 to 671.760 may require any person who is engaged in any activity regulated by ORS 671.510
22 to 671.760 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to
23 671.760. If a person who is contracting directly with the owner of the property does not demonstrate
24 proof of compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or in-
25 vestigator may give notice of noncompliance to the person. The notice of noncompliance shall be in
26 writing, shall specifically state that the person is not in compliance with the licensing requirements
27 of ORS 671.510 to 671.760 and shall provide that unless the person demonstrates proof of compliance
28 within two days of the date of the notice, the inspector or investigator may by order stop all work
29 then being done by the person. The notice of noncompliance shall be served upon the person and
30 shall be served upon or delivered to the owner of each property upon which the person is then
31 performing work under contract. If more than one person is the owner of any such property, a copy
32 of the notice need be given to only one of such persons. If after receipt of the notice of noncompli-
33 ance the person fails within the two-day period specified in the notice to demonstrate proof of
34 compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or investigator
35 may order the work stopped by notice in writing served on any persons engaged in the activity. Any
36 person so notified shall stop such work until proof of compliance is demonstrated. However, the in-
37 spector or investigator may not order the work stopped until at least two days after the copies of
38 the notice of noncompliance have been served upon or delivered to the owners.

39 (4) Notwithstanding subsection (3) of this section, the board may order landscaping work stopped
40 immediately if the landscape contracting business working on a worksite cannot demonstrate that
41 the business has been licensed by the board at any time within the two years immediately preceding
42 work on the worksite.

43 (5) The board has the power to administer oaths, issue notices and subpoenas in the name of the
44 board, compel the attendance of witnesses and the production of evidence, hold hearings and per-
45 form such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to

1 671.760.

2 (6) If any person fails to comply with a subpoena issued under subsection (5) of this section or
3 refuses to testify on matters on which the person may be lawfully interrogated, the board shall
4 compel obedience in the manner provided in ORS 183.440.

5 **SECTION 18.** ORS 671.557 is amended to read:

6 671.557. In addition to any other remedy available, if the [*State Landscape Contractors Board*]
7 **Construction Contractors Board** believes that a person has engaged in, is engaging in or is about
8 to engage in any act, practice or transaction that violates ORS 671.510 to 671.760, the board may
9 direct the Attorney General to apply to the court for an injunction to restrain the person from en-
10 gaging in the act, practice or transaction.

11 **SECTION 19.** ORS 671.560 is amended to read:

12 671.560. (1) Except as provided in ORS 671.571 and 671.590, the [*State Landscape Contractors*
13 *Board*] **Construction Contractors Board** shall issue a landscape construction professional license
14 to an applicant who satisfies the requirements of ORS 671.570.

15 (2) The board shall issue a landscape contracting business license to an applicant who satisfies
16 the requirements of the board.

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

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

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

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

27 **SECTION 20.** ORS 671.562 is amended to read:

28 671.562. (1) A landscape contracting business that **is required under ORS 671.530 to be li-**
29 **censed and** qualifies under ORS 671.525 to be classified as a nonexempt independent contractor
30 must maintain workers' compensation insurance coverage in effect for all employees of the land-
31 scape contracting business.

32 (2) A landscape contracting business licensee that qualifies under ORS 671.525 to be classified
33 as an exempt independent contractor, and that has entered into a contract with a worker leasing
34 company or temporary service provider for the supplying of workers to the landscaping business,
35 must verify that workers' compensation insurance coverage is maintained in effect for all leasing
36 company or service provider employees supplied for use by the business. As used in this subsection,
37 "worker leasing company" and "temporary service provider" have the meanings given those terms
38 under ORS 656.850.

39 **SECTION 21.** ORS 671.563 is amended to read:

40 671.563. An applicant for the issuance or renewal of a landscape construction professional li-
41 cense or landscape contracting business license shall include in the application to the [*State Land-*
42 *scape Contractors Board*] **Construction Contractors Board** notice of any unpaid court judgment,
43 arbitration award or administrative agency final order entered or issued in any jurisdiction that
44 requires the applicant to pay damages arising out of the performance of, or a contract for, land-
45 scaping work. The board may adopt rules that require an applicant to provide additional informa-

tion regarding a judgment, arbitration award or agency final order described in this section and the status of any appeal or exceptions.

SECTION 22. ORS 671.565 is amended to read:

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

(a) Pay to the [*State Landscape Contractors Board*] **Construction Contractors Board** the applicable landscape contracting business license fee established by the board under ORS 671.650.

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

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

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

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

(f) Indicate, as set forth in ORS 670.600, the basis under which the applicant qualifies as an independent contractor and the class of independent contractor described in ORS 671.525 for which the applicant qualifies.

(2)(a) If an applicant for licensing under this section qualifies to be classified as a nonexempt independent contractor, the applicant shall provide the employer identification number of the applicant and evidence satisfactory to the board that the applicant provides workers' compensation insurance coverage for all employees of the landscape contracting business.

(b) If an applicant for licensing under this section qualifies to be classified as an exempt independent contractor and has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscape contracting business, the applicant shall provide evidence satisfactory to the board that the applicant has verified the maintenance of workers' compensation insurance coverage for all leasing company or service provider employees supplied for use by the business. As used in this paragraph, "worker leasing company" and "temporary service provider" have the meanings given those terms in ORS 656.850.

(3) At the time of application for a license, for renewal of a license in active status or for return of a license to active status, the applicant shall provide evidence satisfactory to the board that the public liability, personal injury and property damage insurance required by this section and any workers' compensation required of the applicant under ORS 671.527 or 671.562 is in effect. During a license period, the licensee shall provide, to the extent required by the board, satisfactory evidence of continued public liability, personal injury and property damage insurance coverage and, if required under ORS 671.562, workers' compensation insurance coverage.

SECTION 23. ORS 671.568 is amended to read:

671.568. (1) If a licensed landscape contracting business is not operating as a landscape contracting business, the [*State Landscape Contractors Board*] **Construction Contractors Board** may, upon request, place the license of the landscape contracting business in inactive status.

(2) A landscape contracting business in inactive status remains subject to board jurisdiction and is required to comply with the requirements for a landscape contracting business other than the security requirement under ORS 671.690 and the insurance requirements under ORS 671.565.

(3) A landscape contracting business that is in inactive status may not:

[(a) *Perform work as a landscape contracting business;*]

[(b) *Offer or provide for the performance of landscaping work as a landscape contracting business;*

or]

1 [(c) Obtain a building permit for work involving landscaping work by the landscape contracting
2 business.]

3 **(a) Perform landscaping activities for which the business receives or is to receive com-**
4 **pen- sation in excess of \$2,000 in any month or \$12,000 in the calendar year.**

5 **(b) Advertise or represent that the business is a licensed landscape contracting business.**

6 (4) A landscape contracting business license may not be placed or maintained in inactive status
7 more than once during a licensing period.

8 **SECTION 24.** ORS 671.570 is amended to read:

9 671.570. (1) Each person applying for a landscape construction professional license must:

10 (a) Pay a nonrefundable application fee.

11 (b) Pay an examination fee.

12 (c) Pay to the [*State Landscape Contractors Board*] **Construction Contractors Board** the land-
13 scape construction professional license fee required by ORS 671.650.

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

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

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

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

21 (2) Notwithstanding subsection (1) of this section, the board may adopt rules allowing a person
22 who does not meet the education and experience requirements in subsection (1)(d) of this section to
23 substitute other education and experience that demonstrate the fitness of the person for licensing
24 as a landscape construction professional.

25 **SECTION 25.** ORS 671.571 is amended to read:

26 671.571. (1) Notwithstanding ORS 671.570, the [*State Landscape Contractors Board*] **Construction**
27 **Contractors Board** may issue a probationary landscape construction professional license to a per-
28 son who does not meet the training and experience qualifications set forth in ORS 671.570. To obtain
29 a probationary landscape construction professional license, the person must:

30 (a) Pay a nonrefundable application fee;

31 (b) Pay an examination fee;

32 (c) Pay to the board the landscape construction professional license fee required by ORS 671.650;
33 and

34 (d) Pass all sections of the examination described in ORS 671.570 within 12 months after first
35 taking the examination.

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

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

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

45 (A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of

1 \$15,000; and

2 (B) Performed landscaping work only on landscaping projects where the amount charged by the
3 landscape contracting business for work on the project during any 12-month period did not exceed
4 \$15,000.

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

7 (3) Except as provided in this section and ORS 671.560 and as the board may provide by rule,
8 a probationary landscape construction professional licensed under this section is for all purposes a
9 landscape construction professional licensed under ORS 671.560.

10 **SECTION 26.** ORS 671.572 is amended to read:

11 671.572. Notwithstanding the provisions of ORS 671.570 regarding experience and employment
12 status, the [*State Landscape Contractors Board*] **Construction Contractors Board** may adopt al-
13 ternative standards for licensure with the board for a person who is already licensed as a contractor
14 under ORS chapter 701.

15 **SECTION 27.** ORS 671.574 is amended to read:

16 671.574. (1) If a landscape construction professional is not operating as a landscape construction
17 professional, the [*State Landscape Contractors Board*] **Construction Contractors Board** may, upon
18 request, place the license of the landscape construction professional in inactive status.

19 (2) A landscape construction professional in inactive status remains subject to board jurisdic-
20 tion, licensing requirements and fees.

21 (3) A landscape construction professional that is in inactive status may not perform or supervise
22 [*work as a landscape construction professional*] **landscaping activities for a licensed landscape**
23 **contracting business.**

24 (4) A landscape construction professional license may not be placed or maintained in inactive
25 status more than once during a licensing period.

26 **SECTION 28.** ORS 671.575 is amended to read:

27 671.575. (1) **Except as provided in subsection (3) of this section,** a landscape contracting
28 business may not file a lien, file a claim with the [*State Landscape Contractors Board*] **Construction**
29 **Contractors Board** or bring or maintain in any court of this state a suit or action for compensation
30 for the performance of any work or for the breach of any contract for work that is subject to ORS
31 671.510 to 671.760 and 671.997, unless the landscape contracting business was:

32 (a) Licensed under ORS 671.510 to 671.760 at the time the landscape contracting business bid
33 or entered into the contract for performance of the work; and

34 (b) Licensed continuously while performing the work for which compensation is sought.

35 (2) If the court determines that the landscape contracting business was not aware of the re-
36 quirement that the business be licensed, a court may choose not to apply subsection (1) of this sec-
37 tion if the court finds that to do so would result in a substantial injustice to the unlicensed
38 landscape contracting business.

39 **(3) Subsection (1) of this section does not prohibit a landscape contracting business from**
40 **filing a lien or bringing or maintaining a suit or action in a court if the business is not re-**
41 **quired under ORS 671.530 to have a landscape contracting business license.**

42 [(3)] (4) If a landscape contracting business falsely swears to information provided under ORS
43 671.560 or 671.565 or knowingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565,
44 the landscape contracting business may not file a lien, file a claim with the [*State Landscape Con-*
45 *tractors Board*] **board** or bring or maintain in any court of this state a suit or action for compen-

1 sation for the performance of any work or for the breach of any contract for work that is subject
2 to ORS 671.510 to 671.760 and 671.997.

3 **SECTION 29.** ORS 671.578 is amended to read:

4 671.578. If any person suffered costs or [*damages*] **injury** as a result of an individual providing
5 a false or invalid [*State Landscape Contractors Board*] **landscape construction professional license**
6 **number or landscape contracting business license** number or otherwise misleading a person with
7 respect to licensing [*with the board*] **as a landscape construction professional or landscape**
8 **contracting business**, that person may bring suit in a court of competent jurisdiction to recover
9 damages. The court may award reasonable attorney fees to the prevailing party in an action under
10 this section.

11 **SECTION 30.** ORS 671.590 is amended to read:

12 671.590. The [*State Landscape Contractors Board*] **Construction Contractors Board** may license
13 without examination any person who is a landscape construction professional licensed, certified or
14 registered under the laws of another state, territory of the United States, the District of Columbia
15 or another country where the requirements on the date the applicant was licensed, certified or
16 registered were substantially equal to the requirements for licensing of landscape construction pro-
17 fessionals in this state on the date of application by the person.

18 **SECTION 31.** ORS 671.595 is amended to read:

19 671.595. (1) As used in this section:

20 (a) "Managing employee" means a person who, at the time of an application for the issuance
21 or renewal of a landscape contracting business license:

22 (A) Is employed in landscaping work only by the applicant; and

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

25 (b) "Owner" means a person who at the time of an application for the issuance or renewal of
26 a landscape contracting business license:

27 (A) Has an ownership interest in the applicant; and

28 (B) Manages or shares in the management of the applicant, as defined by the board by rule.

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

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

37 (4) The board shall adopt rules establishing required courses for an owner or managing em-
38 ployee who seeks to qualify the business for a landscape contracting business license, but who is
39 not licensed as a landscape construction professional. The courses required by the board shall be
40 designed to educate the owner or managing employee regarding business practices and Oregon laws
41 affecting landscape contracting businesses. The board may not require an owner or managing em-
42 ployee to take a total of more than 16 hours of instruction.

43 (5) When adopting rules to carry out subsection (4) of this section, the board shall consider the
44 availability of courses in the regions of this state. The board shall encourage course providers to
45 use the most up-to-date technology to make courses widely available.

1 (6) A course provider may submit information regarding course materials, examinations and in-
2 structor qualifications to the board for approval. The board shall approve courses if the course
3 materials, examinations and instructors meet board requirements. The board shall periodically re-
4 view approved courses to ensure continuing compliance with board requirements. The board shall
5 develop and make available a list of providers that offer courses that will enable an owner or
6 managing employee to comply with the requirements of subsection (2) of this section.

7 **SECTION 32.** ORS 671.600 is amended to read:

8 671.600. (1) A new landscape contracting business license shall be required whenever there is
9 a change in ownership, irrespective of whether the business name is changed. As used in this sub-
10 section, "change in ownership" does not include a change in the holders of corporate stock.

11 (2) If a licensee moves to another location, relicensing is not required but the licensee must
12 notify the [*State Landscape Contractors Board*] **Construction Contractors Board** promptly of the
13 new address.

14 **SECTION 33.** ORS 671.603 is amended to read:

15 671.603. (1) A landscape construction professional or person operating as a landscape contract-
16 ing business shall notify the [*State Landscape Contractors Board*] **Construction Contractors Board**
17 of a change of address for the professional or business that occurs while the professional or business
18 is licensed by the board or within one year after a license expires. The landscape construction
19 professional or landscape contracting business shall ensure that the board receives notice of the
20 change of address no later than the 10th day after the change of address occurs.

21 (2) Initial notice of a contested case or arbitration directed by the board to the last-known ad-
22 dress of record for a landscape construction professional or landscape contracting business is con-
23 sidered delivered to the professional or business when deposited in the United States mail and sent
24 registered, certified or post office receipt secured. Any other communication directed by the board
25 to the last-known address of record for a landscape construction professional or landscape con-
26 tracting business is considered delivered to the professional or business when deposited in the
27 United States mail, regular mail.

28 **SECTION 34.** ORS 671.605 is amended to read:

29 671.605. A partnership or corporation licensed as a landscape contracting business shall notify
30 the [*State Landscape Contractors Board*] **Construction Contractors Board** immediately upon any
31 change in partners or corporate owners or in the percentage of an ownership interest in the land-
32 scape contracting business. Upon a change in partners, a licensed partnership immediately shall
33 apply for a new license and pay to the board the fee required by ORS 671.650 for an original license.

34 **SECTION 35.** ORS 671.610 is amended to read:

35 671.610. (1) In addition to any civil penalty assessed under ORS 671.997, the [*State Landscape*
36 *Contractors Board*] **Construction Contractors Board** may suspend, revoke or refuse to issue or
37 renew the license of a landscape construction professional or landscape contracting business that
38 does any of the following:

39 (a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material
40 misrepresentation.

41 (b) Makes a material misrepresentation about the quality of any material or service the person
42 provides.

43 (c) Performs defective work.

44 (d) Furnishes defective materials.

45 (e) Makes misleading statements when advertising services or materials.

- 1 (f) Violates a provision of ORS 671.510 to 671.760.
- 2 (g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termi-
3 nation, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS
4 671.690.
- 5 (h) Fails to maintain public liability, personal injury and property damage insurance as required
6 by ORS 671.565 throughout a licensing period.
- 7 (i) Fails to comply with ORS 671.527 or 671.562.
- 8 (j) Fails to provide evidence of workers' compensation coverage as described in ORS 671.565.
- 9 (k) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.
- 10 (L) Performs work for which a permit is required under the state building code without obtain-
11 ing the required permit, if the work results in the filing of a claim with the board.
- 12 (m) Violates a rule or order of the board.
- 13 (n) Refuses to comply with a subpoena issued by the board.
- 14 (o) Fails to pay in full any amount owed to a claimant under a final order of the board or an
15 arbitration award, or under a judgment rendered in this or any other state.
- 16 (p) Does not make payment, including any interest due, for labor or materials contracted for by
17 the person pursuant to a contract for a public improvement within 90 days after the date the person
18 receives payment from a public contracting agency or, if the person is a subcontractor, from the
19 contractor.
- 20 (q) Engages in conduct as a landscape construction professional or landscape contracting busi-
21 ness that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.
- 22 (r) Fails to comply with the requirements of ORS 652.120.
- 23 (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375,
24 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or
25 164.415, provided that the facts supporting the conviction and all intervening circumstances make
26 the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS
27 670.280.
- 28 (2) The board may suspend or refuse to renew the license of a landscape construction profes-
29 sional or landscape contracting business without prior hearing if, after investigating and setting
30 forth in writing the facts supporting the action, the board determines that continued activity by the
31 landscape construction professional or landscape contracting business poses an imminent threat of
32 serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew un-
33 der this subsection include, but are not limited to:
 - 34 (a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;
 - 35 (b) The lack of public liability, personal injury or property damage insurance required under
36 ORS 671.565;
 - 37 (c) The lack of workers' compensation insurance that is required of the licensee under ORS
38 671.562;
 - 39 (d) The hiring of employees while licensed as exempt under ORS 671.525;
 - 40 (e) Conduct as a landscape construction professional or a landscape contracting business that
41 is dishonest;
 - 42 (f) Operation of a landscape contracting business that does not employ at least one licensed
43 landscape construction professional; or
 - 44 (g) The failure to notify the board of any unpaid court judgment, arbitration award or adminis-
45 trative agency final order as required by ORS 671.563.

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

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

11 (5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting
12 business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board deter-
13 mines, after notice and opportunity for a hearing, that the landscape contracting business was
14 working with other landscape contracting businesses on the same task and work site where one of
15 the landscape contracting businesses is licensed as an exempt independent contractor under ORS
16 671.525 (2)(b) and the total number of landscape contracting businesses working on the task ex-
17 ceeded:

18 (a) Two sole proprietors;

19 (b) One partnership;

20 (c) One corporation; or

21 (d) One limited liability company.

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

24 **SECTION 36.** ORS 671.614 is amended to read:

25 671.614. (1) The [*State Landscape Contractors Board*] **Construction Contractors Board** may is-
26 sue an order placing a **licensed** landscape contracting business, or any landscape construction pro-
27 fessional that is employed by the landscape contracting business or is a landscape contracting
28 business owner or officer as defined in ORS 671.607, on probation if three or more claims are filed
29 against the landscape contracting business's bond, letter of credit or deposit within a 12-month pe-
30 riod.

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

36 (3) The board may require as a condition of probation imposed under this section that the
37 landscape construction professional take a board-approved education course in one or more subjects
38 relating to landscape operations.

39 (4) The board may require as a condition of probation imposed under this section that the owner
40 or officer of the landscape contracting business take a board-approved education course in one or
41 more subjects relating to landscape contracting business or general business practices.

42 (5) The board may take action to suspend, revoke or refuse to renew the license of the landscape
43 contracting business or landscape construction professional if the business or professional fails to
44 fulfill the conditions of the probation.

45 **SECTION 37.** ORS 671.615 is amended to read:

1 671.615. The [*State Landscape Contractors Board*] **Construction Contractors Board** may license
2 a landscape construction professional to install backflow assemblies for irrigation systems and
3 ornamental water features. The board, by rule, shall establish qualifications for issuance of a license
4 under this section. A landscape construction professional may install a backflow assembly only if the
5 landscape construction professional is licensed under this section and is the owner of, or employed
6 by, a licensed landscape contracting business. A landscape construction professional installing a
7 backflow assembly may tap into the potable water supply only at a point after the connection be-
8 tween the water system and the customer, as that connection is defined in ORS 448.115.

9 **SECTION 38.** ORS 671.617 is amended to read:

10 671.617. The [*State Landscape Contractors Board*] **Construction Contractors Board** shall con-
11 sult with the State Plumbing Board in developing any written and practical examinations for back-
12 flow assembly installer licenses.

13 **SECTION 39.** ORS 671.625 is amended to read:

14 671.625. (1) The [*State Landscape Contractors Board*] **Construction Contractors Board** shall
15 by rule adopt minimum standards for written contracts and billings of [*the*] **licensed** landscape
16 contracting businesses. The standards shall set forth requirements for information that must be
17 contained in **the** contracts and billings. The information required shall be any information the board
18 determines is necessary to provide protection for consumers of the services and materials provided
19 by **licensed** landscape contracting businesses.

20 (2) Work by a **licensed** landscape contracting business subject to ORS 671.510 to 671.760 shall
21 only be performed subject to a written contract. Any contract or billing for such work must conform
22 to the standards adopted under subsection (1) of this section.

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

25 **SECTION 40.** ORS 671.650 is amended to read:

26 671.650. (1) The [*State Landscape Contractors Board shall establish*] **Construction Contractors**
27 **Board shall adopt rules establishing** fees, including but not limited to annual landscape con-
28 struction professional license fees and annual landscape contracting business license fees.

29 (2) The license fee for an out-of-state landscape contracting business operating in Oregon must
30 be the same as for an Oregon landscape contracting business.

31 **SECTION 41.** ORS 671.660 is amended to read:

32 671.660. (1) The fee for renewal of a license issued under ORS 671.510 to 671.760 shall be paid
33 annually on or before the last day of the month of the anniversary of issuance.

34 (2) The [*State Landscape Contractors Board*] **Construction Contractors Board** may not issue
35 a new license to a person who has been previously licensed under ORS 671.510 to 671.760 and whose
36 license has expired, unless the person makes written application on a form approved by the board
37 and pays the required annual fee. **If the person was required to have a license at any time**
38 **during which the license was expired**, the board may require the person to also pay a penalty fee.

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

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

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

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

45 (b) Demonstrate that the person has complied with the continuing education requirement

1 adopted by the board.

2 **SECTION 42.** ORS 671.670 is amended to read:

3 671.670. In accordance with any applicable provision of ORS chapter 183, the [*State Landscape*
4 *Contractors Board*] **Construction Contractors Board** may adopt rules the board considers reason-
5 able for the administration and enforcement of ORS 671.510 to 671.760 and 671.997.

6 **SECTION 43.** ORS 671.676 is amended to read:

7 671.676. (1) The [*State Landscape Contractors Board*] **Construction Contractors Board** shall
8 adopt rules establishing continuing education requirements for **licensed** landscape construction
9 professionals. The board may not require **licensed** landscape construction professionals to take more
10 than 10 hours of continuing education every year.

11 (2) The board may approve programs for purposes of continuing education for **licensed** land-
12 scape construction professionals and determine the number of hours to be credited to the programs.
13 The board shall ensure that continuing education opportunities for landscape construction profes-
14 sionals are readily available.

15 (3) Programs approved by the board for continuing education purposes must be designed to di-
16 rectly contribute to the professional competency of landscape construction professionals. Approved
17 programs may include, but need not be limited to:

18 (a) Professional development programs and technical meetings of professional associations for
19 landscape contracting businesses or for related industries such as pesticide application or irrigation
20 auditing;

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

22 (c) Professional staff training programs by associations of landscape construction professionals;
23 and

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

25 (4) The board may adopt rules establishing grounds for obtaining a waiver of the continuing
26 education requirements for **licensed** landscape construction professionals. The board may not allow
27 a waiver for more than two consecutive years except for a waiver due to military service, retire-
28 ment, disability, absence from the state, inactive status or extreme hardship.

29 **SECTION 44.** ORS 671.681 is amended to read:

30 671.681. (1) To aid and advise the [*State Landscape Contractors Board*] **Construction Contrac-**
31 **tors Board** in the performance of the functions of the board, the board administrator may establish
32 such advisory and technical committees as the administrator considers necessary. These committees
33 may be continuing or temporary. The administrator shall determine the representation, membership,
34 terms and organization of the committees and shall appoint their members. The administrator is an
35 ex officio member of each committee.

36 (2) Members of the committees are not entitled to compensation, but the board may fix and pay
37 to the committee members from the funds available to the board per diem and actual and necessary
38 travel and other expenses incurred by the committee members in the performance of their official
39 duties.

40 **SECTION 45.** ORS 671.690 is amended to read:

41 671.690. (1) An applicant for a license as a landscape contracting business shall file with the
42 [*State Landscape Contractors Board*] **Construction Contractors Board** a surety bond with one or
43 more corporate sureties authorized to do business in this state, or an irrevocable letter of credit
44 issued by an insured institution, as defined in ORS 706.008. The amount of the bond or letter of
45 credit shall be:

1 (a) \$3,000 for an applicant, unless the applicant is described in paragraph (b), (c) or (d) of this
2 subsection.

3 (b) \$10,000 for an applicant who, not in conjunction with the performance of landscaping work,
4 constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls,
5 unless the applicant is made subject to paragraph (d) of this subsection by work on other jobs per-
6 formed by the applicant.

7 (c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a land-
8 scape job.

9 (d) \$15,000 for an applicant who charges \$25,000 or more for a landscape job.

10 (2) The bond or letter of credit shall be conditioned that the applicant pays:

11 (a) All taxes and contributions due to the State of Oregon;

12 (b) All persons furnishing labor or material, or renting or supplying equipment to the landscape
13 contracting business;

14 (c) All amounts that may be adjudged against the landscape contracting business by reason of
15 negligent or improper work or breach of contract in performing any work subject to ORS 671.510
16 to 671.760; and

17 (d) All amounts from the bond, letter of credit or deposit the board orders paid under ORS
18 671.703.

19 (3) In addition to providing the applicant with coverage for the activities described in ORS
20 671.520 (1), the bond or letter of credit must provide the applicant with coverage for:

21 (a) Backflow assembly testing services provided by employees of the landscape contracting
22 business who are certified under ORS 448.279;

23 (b) The installation, repair or maintenance by the landscape contracting business of backflow
24 assemblies for irrigation systems and ornamental water features as described in ORS 447.060; and

25 (c) The installation by the landscape contracting business of landscape irrigation control wiring
26 and outdoor landscape lighting as described in ORS 479.940.

27 (4) In lieu of the surety bond or letter of credit, the applicant may file with the board, under the
28 same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities ac-
29 ceptable to the board.

30 (5) The bond, letter of credit or deposit must be continuously on file with the board in the
31 amount required by this section and is for the exclusive purpose of payment of final orders and ar-
32 bitration awards in accordance with ORS 671.703. Upon termination or cancellation of the bond,
33 withdrawal of the deposit or reduction of the bond, letter of credit or deposit to less than the re-
34 quired amount, the licensee shall immediately:

35 (a) File a replacement bond, letter of credit or deposit; or

36 (b) Surrender the license to the board and cease operating as a landscape contracting business.

37 (6) If the cost of a project makes, or foreseeably will make, a licensee subject to a higher bond
38 or letter of credit requirement under subsection (1) of this section, the licensee shall immediately
39 file additional bonds, letters of credit or deposits to meet the higher requirements.

40 (7) The landscape contracting business is responsible for all work subject to ORS 671.510 to
41 671.760 that is performed or contracted for by the business.

42 **SECTION 46.** ORS 671.695 is amended to read:

43 671.695. A claim against a licensed landscape contracting business is payable from the bond,
44 letter of credit or deposit required of the landscape contracting business under ORS 671.690 only if
45 the claim arises from the performance, or a contract for the performance, of work that is subject

1 to ORS 671.510 to 671.760. The claim must be of one or more of the following types:

2 (1) A claim against the landscape contracting business by the property owner or the owner's
3 agent for any of the following:

4 (a) Negligent work.

5 (b) Improper work.

6 (c) Breach of contract.

7 (2) A claim against the landscape contracting business by the property owner or the owner's
8 agent to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010
9 to 87.060 or 87.075 to 87.093. The [*State Landscape Contractors Board*] **Construction Contractors**
10 **Board** may reduce a claim described in this subsection by any amount the claimant owes the land-
11 scape contracting business. The board shall process claims described in this subsection only if:

12 (a) The owner paid the landscape contracting business for work subject to ORS 671.510 to
13 671.760; and

14 (b) A lien established against the property of the owner under ORS 87.010 to 87.060 or 87.075
15 to 87.093 is filed because the landscape contracting business failed to pay the person claiming the
16 lien for that person's contribution toward completion of the improvement.

17 (3) A claim against a licensed subcontractor by a licensed landscape contracting business or by
18 a construction contractor licensed under ORS chapter 701, for any of the following:

19 (a) Negligent work.

20 (b) Improper work.

21 (c) Breach of contract.

22 (4) A claim by a person furnishing labor to a landscape contracting business.

23 (5) A claim, as limited by rule of the board, by a person furnishing material or renting or sup-
24 plying equipment to the landscape contracting business. The minimum limit set by the board may
25 not be more than \$150.

26 (6) A claim by a subcontractor against the landscape contracting business for unpaid labor or
27 materials arising out of a contract.

28 **SECTION 47.** ORS 671.700 is amended to read:

29 671.700. (1) If a claim is filed with the [*State Landscape Contractors Board*] **Construction Con-**
30 **tractors Board** against a licensed landscape contracting business for payment from the bond, letter
31 of credit or deposit required of the business under ORS 671.690, the board may resolve the dispute
32 involving the landscape contracting business.

33 (2) A person having a claim against a **licensed** landscape contracting business shall give the
34 board notice of the claim in writing 90 days before any action on the bond, letter of credit or deposit
35 is commenced.

36 (3) The board may not accept a claim against a landscape contracting business for processing
37 if the claim is not filed with the board within one year after the business substantially completed
38 work. The board may not issue an order for the payment of a court judgment or arbitration award
39 from the bond, letter of credit or deposit of a landscape contracting business unless the person has
40 timely filed with the board a claim against the business regarding the same matter that resulted in
41 the judgment or award.

42 **SECTION 48.** ORS 671.703 is amended to read:

43 671.703. (1) Upon acceptance of a claim described in ORS 671.695, the [*State Landscape Con-*
44 *tractors Board*] **Construction Contractors Board** shall initiate an investigation. Upon completion
45 of the investigation, if the board determines that facts exist supporting an order for payment, the

1 board may order the **licensed** landscape contracting business to pay the claim. A party to the claim
2 may request a hearing on the order issued by the board.

3 (2) Subject to subsection (5) of this section, if the resolution of the claim requires a hearing, the
4 board may require that the hearing be conducted as a binding arbitration under rules adopted by
5 the board under subsection (4) of this section.

6 (3) The board may use arbitration, mediation or other forms of dispute resolution to resolve a
7 landscaping dispute between any parties who agree to follow the rules of the board, including par-
8 ties to a dispute that is not a claim described in ORS 671.695.

9 (4) Except as provided in this subsection, rules adopted by the board to regulate arbitration
10 under subsections (2) and (3) of this section must substantially conform with the provisions of ORS
11 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.
12 The rules may:

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

15 (b) Limit orders and awards made by the arbitrator as necessary to comply with ORS 671.510
16 to 671.760;

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

19 (d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time
20 than provided by ORS 36.705 and 36.760; and

21 (e) Include any other provision necessary to conform the arbitration to ORS 671.510 to 671.760.

22 (5) A party to a claim that is subject to a board order of binding arbitration under subsection
23 (2) of this section may avoid the arbitration if the party requests to have the claim resolved through
24 a contested case hearing or files a complaint in a court. A party making a request or filing a
25 complaint under this subsection is subject to the following provisions:

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

29 (b) If the party files a complaint in a court, the party must, within the time specified in para-
30 graph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled
31 by the board rule to receive a copy of the complaint. If the party filing the complaint is the claim-
32 ant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed
33 by the licensed landscape contracting business against whom a claim is alleged, the complaint may
34 be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the
35 claimant to file a response alleging the elements of the claim. The claimant has the burden of
36 proving the elements of the claim in any action described in this paragraph.

37 (c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or
38 complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the
39 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to
40 timely deliver a request or complaint under this paragraph constitutes consent to the binding arbi-
41 tration.

42 (d) If a party makes a timely request under paragraph (a) of this subsection for a contested case
43 hearing and another party timely files a complaint in compliance with paragraph (b) of this sub-
44 section, the filing of the complaint supersedes the request for a contested case hearing.

45 (e) A party may not withdraw a request made in compliance with paragraph (a) of this sub-

1 section unless all parties agree to the withdrawal.

2 (f) The provisions of paragraph (b) of this subsection are in addition to any other requirements
3 imposed by law regarding the filing of a complaint.

4 (6) An arbitration conducted under subsection (2) or (3) of this section must be held before an
5 administrative law judge acting as arbitrator. The administrative law judge assigned to act as
6 arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings
7 established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator
8 is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to
9 ORS 183.645.

10 (7) If a party to a claim described in ORS 671.695 requests a contested case hearing, the board
11 shall schedule the hearing. If a party files a court action to determine the matter described in the
12 claim, the board shall suspend further processing of the claim until the action is resolved by an
13 appropriate court.

14 (8) If the matter described in a claim is submitted for determination by a court, the board may
15 require that the claimant provide status reports on the pending action. The board may dismiss or
16 close a claim described in ORS 671.695 as established by rule of the board if the claimant fails to
17 submit status reports on a pending action.

18 (9) If a final order or arbitration award is issued under this section and the landscape con-
19 tracting business does not pay the claim on or before the 30th day after receiving the order, the
20 board shall order the claim paid out of the bond, letter of credit or deposit filed under ORS 671.690.

21 (10) The board may dismiss or close a claim as established by rule of the board if:

22 (a) The claimant does not permit the person against whom the claim is filed to be present at
23 any on-site investigation made by the board; or

24 (b) The board determines that the person against whom the claim is filed is capable of complying
25 with recommendations made by the board relative to the claim, but the claimant does not permit the
26 person to comply with the recommendations. The board may dismiss or close a claim under this
27 paragraph only if the person was licensed at the time the work was first performed and is licensed
28 at the time the board makes its recommendations.

29 (11) The board may suspend processing a claim if the board determines that the nature or
30 complexity of the claim is such that a court is the appropriate forum for the adjudication of the
31 claim.

32 **SECTION 49.** ORS 671.707 is amended to read:

33 671.707. (1) If a **landscape contracting business fails to timely pay a** final order of the [*State*
34 *Landscape Contractors Board*] **Construction Contractors Board** [*is not paid by the landscape con-*
35 *tracting business*], the board shall notify the surety on the business's bond.

36 (2) An order of the board that determines a claim under ORS 671.703 that becomes final by op-
37 eration of law or on appeal and remains unpaid for 20 days after the order becomes final is an order
38 in favor of the claimant against the landscape contracting business and may be recorded with the
39 county clerk in any county of this state.

40 (3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition
41 to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant
42 to this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced
43 as provided in ORS 205.125 and 205.126.

44 **SECTION 50.** ORS 671.710 is amended to read:

45 671.710. (1) Determinations by the [*State Landscape Contractors Board*] **Construction Contrac-**

1 **tors Board** or judgments against the surety bond, letter of credit or deposit of a landscape con-
 2 tracting business for claims filed during a 90-day period shall be satisfied in the priority listed in
 3 subsections (2) to (4) of this section. The payment of a claim filed during a 90-day period has priority
 4 over any claim filed during a subsequent 90-day period. A 90-day period begins on the date the first
 5 claim is filed with the board. A subsequent 90-day period begins on the date the first claim is filed
 6 with the board after the close of the preceding 90-day period.

7 (2) Determinations and judgments as a result of claims filed within a 90-day period against a
 8 landscape contracting business by owners of property upon which landscaping work was performed
 9 or was contracted to perform, or by the agents of the owner, have payment priority to the full extent
 10 of the bond, letter of credit or deposit over all other claims filed within the same 90-day period.

11 (3) If the total of all claims filed against a landscape contracting business by property owners
 12 or their agents under subsection (2) of this section within a 90-day period does not exhaust the bond,
 13 letter of credit or deposit, amounts due as a result of all other claims filed within the same 90-day
 14 period may be satisfied from the remainder of the bond, letter of credit or deposit, except that the
 15 total amount paid from any one bond to nonowner claimants may not exceed \$3,000.

16 (4) If the total of all claims against a landscape contracting business within a single 90-day pe-
 17 riod exceeds the amount of the bond, letter of credit or deposit available for payment of those
 18 claims, payment from the bond, letter of credit or deposit shall be apportioned as the board deter-
 19 mines, subject to the claim payment priorities established under this section.

20 (5) The total amount paid from any one bond for recovery of dispute resolution costs, interest
 21 and attorney fees may not exceed \$3,000.

22 **SECTION 51.** ORS 671.750 is amended to read:

23 671.750. The Legislative Assembly intends to reduce the number of city business licenses that
 24 a landscape contracting business must obtain to conduct business in the Portland metropolitan area.
 25 The purpose of this section and ORS 671.755 is to enable a landscape contracting business to secure
 26 from the metropolitan service district one business license that will permit the landscape contract-
 27 ing business to conduct business in cities in which the landscape contracting business performs a
 28 limited amount of work and in which it does not have a principal place of business. The Legislative
 29 Assembly also intends that this section and ORS 671.755 apply only to landscape contracting busi-
 30 nesses without regard to any subsequent expansion of the jurisdiction of the [*State Landscape Con-*
 31 *tractors Board*] **Construction Contractors Board** over other businesses. It is the policy of this
 32 state that, to the maximum extent possible consistent with the requirements of this section and ORS
 33 671.755, the cities within the boundaries of the metropolitan service district be allowed to control
 34 the imposition of business license taxes and to maintain the level of revenues obtained from those
 35 taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect
 36 the landscape contracting business activity within the participating cities.

37 **SECTION 52.** ORS 671.997 is amended to read:

38 671.997. (1) Except as provided in subsection (4) of this section, a person who violates any pro-
 39 vision of ORS 671.510 to 671.760 or a rule adopted pursuant to ORS 670.310, 670.605 or 671.670 shall
 40 forfeit and pay to the [*State Landscape Contractors Board*] **Construction Contractors Board** a civil
 41 penalty in an amount determined by the board of not more than \$2,000 for each offense.

42 (2) The board shall impose civil penalties under this section as provided in ORS 183.745.

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

45 (4) If a landscape contracting business commits an act described under ORS 671.610 (5), the

1 board shall impose penalties and sanctions on both the landscape contracting business to which the
 2 contract is awarded and the landscape contracting business that awards the contract as follows:

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

8 **SECTION 53. ORS 671.630 and 671.655 are repealed.**

9
 10 **MISCELLANEOUS STATUTORY CHANGES**

11
 12 **SECTION 54.** ORS 182.454 is amended to read:

13 182.454. The following semi-independent state agencies are subject to ORS 182.456 to 182.472:

- 14 (1) The Appraiser Certification and Licensure Board.
- 15 (2) The State Board of Architect Examiners.
- 16 (3) The State Board of Examiners for Engineering and Land Surveying.
- 17 (4) The State Board of Geologist Examiners.
- 18 (5) The State Landscape Architect Board.
- 19 (6) The Oregon Board of Optometry.
- 20 (7) The Oregon Patient Safety Commission.
- 21 (8) The Oregon Wine Board.
- 22 (9) The State Board of Massage Therapists.
- 23 (10) The Physical Therapist Licensing Board.
- 24 [(11) *The State Landscape Contractors Board.*]

25 **SECTION 55.** ORS 183.457 is amended to read:

26 183.457. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, and unless otherwise authorized by an-
 27 other law, a person participating in a contested case hearing conducted by an agency described in
 28 this subsection may be represented by an attorney or by an authorized representative subject to the
 29 provisions of subsection (2) of this section. The Attorney General shall prepare model rules for
 30 proceedings with lay representation that do not have the effect of precluding lay representation.
 31 No rule adopted by a state agency shall have the effect of precluding lay representation. The
 32 agencies before which an authorized representative may appear are:

- 33 (a) The [*State Landscape Contractors Board*] **Construction Contractors Board** in the adminis-
 34 tration of the Landscape Contractors Law.
- 35 (b) The State Department of Energy and the Energy Facility Siting Council.
- 36 (c) The Environmental Quality Commission and the Department of Environmental Quality.
- 37 (d) The Department of Consumer and Business Services for proceedings in which an insured
 38 appears pursuant to ORS 737.505.
- 39 (e) The Department of Consumer and Business Services and any other agency for the purpose
 40 of proceedings to enforce the state building code, as defined by ORS 455.010.
- 41 (f) The State Fire Marshal in the Department of State Police.
- 42 (g) The Department of State Lands for proceedings regarding the issuance or denial of fill or
 43 removal permits under ORS 196.800 to 196.825.
- 44 (h) The Public Utility Commission.
- 45 (i) The Water Resources Commission and the Water Resources Department.

1 (j) The Land Conservation and Development Commission and the Department of Land Conser-
2 vation and Development.

3 (k) The State Department of Agriculture, for purposes of hearings under ORS 215.705.

4 (L) The Bureau of Labor and Industries.

5 (2) A person participating in a contested case hearing as provided in subsection (1) of this sec-
6 tion may appear by an authorized representative if:

7 (a) The agency conducting the contested case hearing has determined that appearance of such
8 a person by an authorized representative will not hinder the orderly and timely development of the
9 record in the type of contested case hearing being conducted;

10 (b) The agency conducting the contested case hearing allows, by rule, authorized representatives
11 to appear on behalf of such participants in the type of contested case hearing being conducted; and

12 (c) The officer presiding at the contested case hearing may exercise discretion to limit an au-
13 thorized representative's presentation of evidence, examination and cross-examination of witnesses,
14 or presentation of factual arguments to ensure the orderly and timely development of the hearing
15 record, and shall not allow an authorized representative to present legal arguments except to the
16 extent authorized under subsection (3) of this section.

17 (3) The officer presiding at a contested case hearing in which an authorized representative ap-
18 pears under the provisions of this section may allow the authorized representative to present evi-
19 dence, examine and cross-examine witnesses, and make arguments relating to the:

20 (a) Application of statutes and rules to the facts in the contested case;

21 (b) Actions taken by the agency in the past in similar situations;

22 (c) Literal meaning of the statutes or rules at issue in the contested case;

23 (d) Admissibility of evidence; and

24 (e) Proper procedures to be used in the contested case hearing.

25 (4) Upon judicial review, no limitation imposed by an agency presiding officer on the partic-
26 ipation of an authorized representative shall be the basis for reversal or remand of agency action
27 unless the limitation resulted in substantial prejudice to a person entitled to judicial review of the
28 agency action.

29 (5) For the purposes of this section, "authorized representative" means a member of a partic-
30 ipating partnership, an authorized officer or regular employee of a participating corporation, asso-
31 ciation or organized group, or an authorized officer or employee of a participating governmental
32 authority other than a state agency.

33 **SECTION 56.** ORS 205.125 is amended to read:

34 205.125. (1) The County Clerk Lien Record maintained under ORS 205.130 shall contain the fol-
35 lowing information for each order or warrant recorded:

36 (a) The name of any person subject to the order or warrant.

37 (b) The name of the officer and the agency that issued the order or warrant or the name of the
38 complainant or claimant in whose favor an order of the Construction Contractors Board [*or State*
39 *Landscape Contractors Board*] has been given. The name of the agency or board that issued the or-
40 der or warrant must be clearly printed on the order or warrant.

41 (c) The amount of any monetary obligation imposed by the order or warrant, and the names of
42 all persons against whom the obligation is imposed.

43 (d) The date on which the order or warrant was received and recorded.

44 (e) Full or partial satisfaction, if any, of any lien claim created by the order or warrant.

45 (f) County Clerk Lien Record instruments filed under ORS 205.130 (3)(c)(A) shall be on official

1 letterhead and include the seals, if any, of the officers and agencies.

2 (g) Such other information as may be considered necessary by the county clerk.

3 (2) From the date that an order or warrant is recorded in the County Clerk Lien Record, the
4 order or warrant shall have the attributes and effect of a judgment that has been entered in the
5 register of the circuit court for that county, including but not limited to the creation of a judgment
6 lien for any monetary obligation in favor of the officer or agency issuing the order or warrant or
7 in favor of the complainant or claimant in the proceedings before the Construction Contractors
8 Board [*or State Landscape Contractors Board*], renewal and enforcement by supplementary pro-
9 ceedings, writs of execution, notices of garnishment and writs of garnishment.

10 (3) From the date that an order or warrant imposing a monetary obligation is recorded in the
11 County Clerk Lien Record, the order or warrant becomes a lien upon the title to and interest in
12 property of the person against whom it is issued in the same manner as a judgment that creates a
13 judgment lien under ORS chapter 18.

14 (4) In addition to any other remedy provided by law, orders and warrants recorded in the County
15 Clerk Lien Record may be enforced as provided in ORS 205.126.

16 **SECTION 57.** ORS 205.126 is amended to read:

17 205.126. (1) At any time after recording an order or warrant in the County Clerk Lien Record,
18 a complainant or claimant or an attorney for an agency, complainant or claimant may file in the
19 circuit court for the county where the order or warrant is recorded, a copy of the original order
20 or warrant certified by the agency to be a true copy of original, and an affidavit of the complainant,
21 claimant or attorney verifying that the order or warrant was recorded in the County Clerk Lien
22 Record for that county, the date that the order or warrant was recorded and the date on which any
23 notice of renewal was recorded under subsection (2) of this section. Subject to any other require-
24 ments that may apply to the enforcement remedy sought by the agency, complainant or claimant,
25 proceedings may thereafter be commenced by the agency, complainant or claimant for the enforce-
26 ment of the order or warrant, in the same manner as provided for the enforcement of judgments is-
27 sued by a court. Enforcement proceedings may include:

28 (a) Writ of execution proceedings under ORS 18.252 to 18.993.

29 (b) Proceedings in support of execution under ORS 18.265, 18.268 and 18.270.

30 (c) Garnishment proceedings under ORS 18.600 to 18.850.

31 (2) At any time within 10 years after the recording of an order or warrant, an agency,
32 complainant or claimant, acting with or without the assistance of an attorney, may renew an order
33 or warrant by recording a notice of renewal in the County Clerk Lien Record. A notice of renewal
34 recorded within the time specified by this subsection has the attributes and effect of an extension
35 of judgment remedies noted in the register under ORS 18.182, from the date that the notice is re-
36 corded. A notice of renewal recorded under this section must state:

37 (a) The name of the agency that issued the order or warrant or the name of the complainant
38 or claimant in whose favor an order of the Construction Contractors Board [*or State Landscape*
39 *Contractors Board*] has been given;

40 (b) The names of all persons against whom a monetary obligation is imposed under the order
41 or warrant; and

42 (c) The date of recording and the recording number, the book and page number for the record-
43 ing, or the volume and page number for the recording.

44 (3) For the purposes of this section:

45 (a) "Agency" means any state officer, board, commission, corporation, institution, department

1 or other state body that has authority to record an order or warrant in the County Clerk Lien Re-
 2 cord.

3 (b) “Complainant or claimant” means a person in favor of which a board order has been re-
 4 corded under the provisions of ORS 671.707 or 701.153.

5 **SECTION 58.** ORS 279C.365 is amended to read:

6 279C.365. (1) A contracting agency that prepares solicitation documents for a public improve-
 7 ment contract shall, at a minimum, include in the solicitation documents:

8 (a) A designation for or description of the public improvement project;

9 (b) The office where the specifications for the project may be reviewed;

10 (c) The date that prequalification applications must be filed under ORS 279C.430 and the class
 11 or classes of work for which bidders must be prequalified if prequalification is a requirement;

12 (d) The date and time after which bids will not be received, which must be at least five days
 13 after the date of the last publication of the advertisement, and may, in the sole discretion of the
 14 contracting agency, direct or permit bidders to submit and the contracting agency to receive bids
 15 by electronic means;

16 (e) The name and title of the person designated to receive bids;

17 (f) The date on which and the time and place at which the contracting agency will publicly open
 18 the bids;

19 (g) A statement that, if the contract is for a public works project subject to the state prevailing
 20 rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the
 21 Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, the
 22 contracting agency will not receive or consider a bid unless the bid contains a statement by the
 23 bidder that the bidder will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.;

24 (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined
 25 in ORS 279A.120;

26 (i) A statement that the contracting agency may reject a bid that does not comply with pre-
 27 scribed public contracting procedures and requirements, including the requirement to demonstrate
 28 the bidder’s responsibility under ORS 279C.375 (3)(b), and that the contracting agency may reject for
 29 good cause all bids after finding that doing so is in the public interest;

30 (j) Information addressing whether a contractor or subcontractor must be licensed under ORS
 31 468A.720; and

32 (k) A statement that the contracting agency may not receive or consider a bid for a public im-
 33 provement contract unless the bidder is licensed by the Construction Contractors Board [*or the State*
 34 *Landscape Contractors Board*].

35 (2) A contracting agency may provide solicitation documents by electronic means.

36 (3) A bid made to the contracting agency under ORS 279C.335 or 279C.400 must be:

37 (a) In writing;

38 (b) Filed with the person the contracting agency designates to receive bids; and

39 (c) Opened publicly by the contracting agency immediately after the deadline for submitting
 40 bids.

41 (4) After the contracting agency opens the bids, the contracting agency shall make the bids
 42 available for public inspection.

43 (5) A bidder shall submit or post a surety bond, irrevocable letter of credit issued by an insured
 44 institution as defined in ORS 706.008, cashier’s check or certified check for all bids as bid security
 45 unless the contracting agency has exempted the contract for which the bidder submits a bid from

1 this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for
2 the contract.

3 (6) Subsection (5) of this section applies only to public improvement contracts with a value, es-
4 timated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways,
5 bridges and other transportation projects, more than \$50,000.

6 **SECTION 59.** ORS 479.940 is amended to read:

7 479.940. (1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following
8 activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise
9 Residential Dwelling Code:

- 10 (a) Prewiring of cable television and telephone systems owned by the owner of the residence;
- 11 (b) Garage door openers;
- 12 (c) Vacuum systems;
- 13 (d) Audio and stereo systems;
- 14 (e) HVAC;
- 15 (f) Landscape sprinkler controls;
- 16 (g) Landscape lighting; and
- 17 (h) Doorbells.

18 (2) The provisions of subsection (1) of this section apply only to residential contractors holding
19 a current license and proper endorsement issued by the Construction Contractors Board.

20 (3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a landscape contracting
21 business licensed under ORS 671.510 to 671.760 when making installations of landscape irrigation
22 control wiring and outdoor landscape lighting involving a Class II or Class III system that does not
23 exceed 30 volts and 750 volt-amperes.

24 (b) A **licensed** landscape contracting business **that is** exempt from licensing under this sub-
25 section shall issue an identification card to its landscape irrigation control wiring or outdoor land-
26 scape lighting installer. The form for the identification card shall be provided by the [*State*
27 *Landscape Contractors Board*] **Construction Contractors Board**. The identification card shall in-
28 clude the name of the installer, the name and [*State Landscape Contractors Board*] **Construction**
29 **Contractors Board** identification number of the landscape contracting business and the date of is-
30 sue of the identification card. The card shall be carried by the installer at the job site when per-
31 forming the allowed electric installations.

32 (4) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical
33 activity involving the installation, maintenance or repair of lottery equipment at retail locations by
34 employees or vendors of the Oregon State Lottery Commission. The exemption provided by this
35 subsection does not authorize work by unlicensed persons on systems of 115 volts or more.

36 (5) All nonlicensure requirements of ORS 479.510 to 479.945, including permits for and compli-
37 ance with the electrical specialty code, apply to activities conducted under subsections (1) to (4) of
38 this section. If any person or business repeatedly violates the permit or code compliance require-
39 ments, in addition to any other remedy, the Electrical and Elevator Board may suspend, condition
40 or revoke a person's or business's right to use this provision.

41 **SECTION 60.** ORS 571.135 is amended to read:

42 571.135. (1) The State Department of Agriculture may issue a shipping permit number to any
43 licensee who requests or requires one. The shipping permit number shall be the same as the license
44 number and so designated on the license.

45 (2) When authorized or required by the department, the shipping permit number shall accompany

1 all shipments and deliveries of nursery stock.

2 (3) A shipping invoice or bill of lading shall accompany a commercial shipment or delivery of
3 nursery stock to be offered for sale. If a shipping invoice accompanies the shipment or delivery, the
4 shipping invoice shall include the following:

5 (a) The name and address of the owner of the nursery stock.

6 (b) The nursery license number of the owner of the nursery stock.

7 (c) The point of origin of the nursery stock.

8 (d) The specific destination to which the nursery stock is being shipped or delivered.

9 (e) A description or inventory of the nursery stock in sufficient detail to allow identification of
10 the nursery stock being shipped or delivered. The description or inventory shall include, at a mini-
11 mum, the numbers, sizes and varieties of plants included in the shipment or delivery.

12 (f) The signature of the nursery stock carrier or the carrier's agent.

13 (4) The department, by rule, may develop a standard form for shipping invoices described in
14 subsection (3) of this section and may make the form available at cost to licensees upon request.

15 (5) Each of the following persons shall retain a copy of the signed shipping invoice or the bill
16 of lading for a commercial shipment or delivery of nursery stock to be offered for sale:

17 (a) The owner of the nursery stock.

18 (b) The carrier or carrier's agent transporting the nursery stock.

19 (c) The person taking delivery of the nursery stock at the shipment or delivery destination.

20 (6) Subsections (3) and (5) of this section do not apply to:

21 (a) A commercial shipment or delivery between two points owned, rented or leased by the owner
22 of the nursery stock; or

23 (b) A commercial shipment or delivery of nursery stock in the possession of a [*business licensed*
24 *by the State Landscape Contractors Board*] **landscape contracting business licensed by the Con-**
25 **struction Contractors Board under ORS 671.510 to 671.760.**

26 **SECTION 61.** ORS 571.250 is amended to read:

27 571.250. The [*State Landscape Contractors Board*] **Construction Contractors Board** and the
28 State Department of Agriculture shall enter into an interagency agreement to address how the board
29 and the department shall ensure that licensed landscape contracting businesses comply with the
30 provisions of this chapter.

31 **SECTION 62.** ORS 670.304 is amended to read:

32 670.304. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following
33 professional licensing and advisory boards:

34 (1) Professional licensing and advisory boards established in the Office of the Secretary of State.

35 (2) The Oregon Board of Maritime Pilots.

36 (3) The Board of Cosmetology, in the Oregon Health Licensing Agency.

37 (4) The State Board of Architect Examiners.

38 [(5) *The State Landscape Contractors Board.*]

39 [(6)] (5) The State Board of Examiners for Engineering and Land Surveying.

40 [(7)] (6) The State Landscape Architect Board.

41 [(8)] (7) The State Board of Geologist Examiners.

42 [(9)] (8) The State Board of Tax Practitioners.

43 [(10)] (9) The Oregon Board of Accountancy.

44 [(11)] (10) The Construction Contractors Board.

45 **SECTION 63.** ORS 670.306 is amended to read:

1 670.306. (1) Subsections (2) and (3) of this section shall apply only to the following professional
2 licensing boards:

- 3 (a) State Board of Architect Examiners.
- 4 (b) Construction Contractors Board.
- 5 (c) State Board of Examiners for Engineering and Land Surveying.
- 6 (d) State Landscape Architect Board.
- 7 [(e) *State Landscape Contractors Board.*]
- 8 [(f)] (e) Oregon Board of Accountancy.
- 9 [(g)] (f) State Board of Tax Practitioners.

10 (2) A board shall fix the qualifications of and appoint an administrative officer. The determi-
11 nation of qualifications and appointment of an administrative officer shall be made after consultation
12 with the Governor.

13 (3) An administrative officer of a board shall not be a member of that board.

14 (4) Subject to the applicable rules of the State Personnel Relations Law, the board shall fix the
15 compensation of its administrator, who shall be in the unclassified service.

16 (5) Subject to applicable rules of the State Personnel Relations Law, the administrative officer
17 shall appoint all subordinate employees, prescribe their duties and fix their compensation.

18 **SECTION 64.** ORS 670.700 is amended to read:

19 670.700. (1) There is established an Interagency Compliance Network consisting of:

- 20 (a) The Department of Justice;
- 21 (b) The Department of Revenue;
- 22 (c) The Employment Department;
- 23 (d) The Department of Consumer and Business Services;
- 24 (e) The Bureau of Labor and Industries;
- 25 (f) The Construction Contractors Board; **and**
- 26 [(g) *The State Landscape Contractors Board; and*]

27 [(h)] (g) Other state agencies that enter into the intergovernmental agreement as described in
28 subsection (3) of this section.

29 (2) The Interagency Compliance Network established under this section shall:

30 (a) Work to establish consistency in agency determinations relating to the classification of
31 workers, including but not limited to classification of workers as independent contractors;

32 (b) Gather and share information relating to persons who pay workers in cash and who do not
33 comply with laws relating to taxation or employment;

34 (c) Gather and share information relating to the misclassification of workers, including but not
35 limited to misclassification as independent contractors;

36 (d) Develop investigative methods for auditing persons who pay workers in cash, or who mis-
37 classify workers, and who do not comply with laws relating to taxation or employment;

38 (e) Conduct joint audits of persons who pay workers in cash, or who misclassify workers, and
39 who do not comply with laws relating to taxation or employment;

40 (f) Identify opportunities for and obstacles to improving compliance with the laws relating to the
41 classification of workers, taxation or employment;

42 (g) Create a coordinated enforcement process for the laws relating to classification of workers
43 that is efficient, fair and effective for the public and the regulatory agencies charged with enforcing
44 laws relating to taxation or employment;

45 (h) Engage in public outreach efforts to educate the public generally on the distinctions between

1 independent contractors and employees and on the laws and regulations governing the duties relat-
 2 ing to classification of workers; and

3 (i) Take such other action as the member agencies deem appropriate to improve compliance with
 4 laws relating to taxation or employment that are administered by the member agencies.

5 (3) The agencies identified in subsection (1)(a) to [(g)] (f) of this section shall enter into an
 6 intergovernmental agreement for the purpose of coordinating the efforts of the agencies under this
 7 section. Any other agency of state government, as defined in ORS 174.111, that has an interest in
 8 compliance with laws relating to taxation or employment may become a member of the Interagency
 9 Compliance Network by entering into the agreement on such terms as may be prescribed by the
 10 agencies identified in subsection (1)(a) to [(g)] (f) of this section.

11 (4) Notwithstanding ORS 314.835 or any other law relating to confidentiality of information, any
 12 agency that is a member of the Interagency Compliance Network may enter into an agreement with
 13 another member agency to provide information to the other agency. Information provided to an
 14 agency under this subsection may be used by the agency only for the purpose of enforcing compli-
 15 ance of laws that are administered by the agency.

16 (5) ORS 192.610 to 192.690 do not apply to meetings of the Interagency Compliance Network or
 17 to meetings of representatives from member agencies of the Interagency Compliance Network for the
 18 purposes set forth in subsection (2) of this section.

19
 20 **OPERATIVE DATE**

21
 22 **SECTION 65. Sections 1 to 3, 7 and 8 of this 2013 Act, the amendments to ORS 182.454,**
 23 **183.457, 205.125, 205.126, 279C.365, 479.940, 571.135, 571.250, 670.304, 670.306, 670.700, 671.520,**
 24 **671.525, 671.530, 671.540, 671.550, 671.555, 671.557, 671.560, 671.562, 671.563, 671.565, 671.568,**
 25 **671.570, 671.571, 671.572, 671.574, 671.575, 671.578, 671.590, 671.595, 671.600, 671.603, 671.605,**
 26 **671.610, 671.614, 671.615, 671.617, 671.625, 671.650, 671.660, 671.670, 671.676, 671.681, 671.690,**
 27 **671.695, 671.700, 671.703, 671.707, 671.710, 671.750 and 671.997 by sections 12 to 52 and 54 to 64**
 28 **of this 2013 Act and the repeal of ORS 671.630 and 671.655 by section 53 of this 2013 Act be-**
 29 **come operative January 1, 2014.**

30
 31 **UNIT CAPTIONS**

32
 33 **SECTION 66. The unit captions used in this 2013 Act are provided only for the conven-**
 34 **ience of the reader and do not become part of the statutory law of this state or express any**
 35 **legislative intent in the enactment of this 2013 Act.**

36
 37 **EMERGENCY**

38
 39 **SECTION 67. This 2013 Act being necessary for the immediate preservation of the public**
 40 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 41 **July 1, 2013.**

42 _____