

**PROPOSED AMENDMENTS TO
SENATE BILL 557**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and lines 3 through 8 and insert “671.603, 671.610, 671.625, 671.660, and
3 671.997; repealing ORS 671.676; and declaring an emergency.”.

4 Delete lines 10 through 29 and delete pages 2 through 31 and insert:

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

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

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

1 **“SECTION 2.** ORS 671.625 is amended to read:

2 “671.625. (1) The State Landscape Contractors Board shall by rule adopt
3 minimum standards for written contracts and billings of the landscape con-
4 tracting businesses. The standards shall set forth requirements for informa-
5 tion that must be contained in contracts and billings. The information
6 required shall be any information the board determines is necessary to pro-
7 vide protection for consumers of the services and materials provided by
8 landscape contracting businesses.

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

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

16 **“SECTION 3.** ORS 671.660 is amended to read:

17 “671.660. (1) The fee for renewal of a license issued under ORS 671.510 to
18 671.760 shall be paid annually on or before the last day of the month of the
19 anniversary of issuance.

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

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

27 “(4) When a landscape contracting business renews its license, the busi-
28 ness must submit the names of all employees who are licensed landscape
29 construction professionals.

30 “(5) When a person renews a landscape construction professional license,

1 the person must[:]

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

4 “[*(b) Demonstrate that the person has complied with the continuing educa-*
5 *tion requirement adopted by the board.*]

6 **“SECTION 4.** ORS 671.997 is amended to read:

7 “671.997. (1) Except as provided in subsection [(4)] **(6)** of this section, a
8 person who violates any provision of ORS 671.510 to 671.760 or a rule adopted
9 pursuant to ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State
10 Landscape Contractors Board a civil penalty in an amount determined by the
11 board of not more than \$2,000 for each offense.

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

14 **“(a) The past history of the person incurring a penalty in taking**
15 **all feasible steps or procedures necessary or appropriate to correct any**
16 **violation.**

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

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

21 **“(3) If the person incurring a penalty under this section is otherwise**
22 **in compliance with the licensing requirements of ORS 671.510 to 671.760**
23 **and the penalty being imposed is not for a violation of any backflow**
24 **assembly installation requirement under ORS 671.615 or rules adopted**
25 **under ORS 671.615, the penalty imposed for the first or second occur-**
26 **rence of a particular violation may be remitted or mitigated on con-**
27 **dition that:**

28 **“(a) The particular violation not continue or occur after a certain**
29 **period not to exceed 15 days; or**

30 **“(b) The person incurring the penalty participate in an educational**

1 **program related to the professional competency of landscape con-**
2 **struction professionals to be determined by the board.**

3 “[2] (4) *[The board shall impose civil penalties under this section as pro-*
4 *vided in ORS 183.745]* **Any civil penalties imposed under this section**
5 **shall be imposed as provided in ORS 183.745.**

6 “[3] (5) The provisions of this section are in addition to and not in lieu
7 of any other penalty or sanction provided by law.

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

12 “(a) A civil penalty of not less than \$500 nor more than \$1,000 for a first
13 offense;

14 “(b) A civil penalty of not less than \$1,000 nor more than \$2,000 for a
15 second offense;

16 “(c) Suspension of license or refusal to reissue license for six months for
17 a third offense;

18 “(d) Revocation of license for three years for a fourth offense; and

19 “(e) Permanent revocation of the landscape contracting business’s license
20 for a fifth offense.

21 **“SECTION 5.** ORS 671.610 is amended to read:

22 “671.610. (1) In addition to any civil penalty assessed under ORS 671.997,
23 the State Landscape Contractors Board may suspend, revoke or refuse to is-
24 sue or renew the license of a landscape construction professional or land-
25 scape contracting business that does any of the following:

26 “(a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760
27 by fraud or material misrepresentation.

28 “(b) Makes a material misrepresentation about the quality of any material
29 or service the person provides.

30 “(c) Performs defective work.

- 1 “(d) Furnishes defective materials.
- 2 “(e) Makes misleading statements when advertising services or materials.
- 3 “(f) Violates a provision of ORS 671.510 to 671.760.
- 4 “(g) Fails to have a replacement bond, letter of credit or deposit on file
5 at the time of a termination, cancellation, reduction or withdrawal of the
6 bond, letter of credit or deposit required by ORS 671.690.
- 7 “(h) Fails to maintain public liability, personal injury and property dam-
8 age insurance as required by ORS 671.565 throughout a licensing period.
- 9 “(i) Fails to comply with ORS 671.527 or 671.562.
- 10 “(j) Fails to provide evidence of workers’ compensation coverage as de-
11 scribed in ORS 671.565.
- 12 “(k) Violates a voluntary compliance agreement entered into under ORS
13 646.605 to 646.652.
- 14 “(L) Performs work for which a permit is required under the state build-
15 ing code without obtaining the required permit, if the work results in the
16 filing of a claim with the board.
- 17 “(m) Violates a rule or order of the board.
- 18 “(n) Refuses to comply with a subpoena issued by the board.
- 19 “(o) Fails to pay in full any amount owed to a claimant under a final
20 order of the board or an arbitration award, or under a judgment rendered in
21 this or any other state.
- 22 “(p) Does not make payment, including any interest due, for labor or
23 materials contracted for by the person pursuant to a contract for a public
24 improvement within 90 days after the date the person receives payment from
25 a public contracting agency or, if the person is a subcontractor, from the
26 contractor.
- 27 “(q) Engages in conduct as a landscape construction professional or
28 landscape contracting business that is dishonest or fraudulent or that the
29 board finds injurious to the welfare of the public.
- 30 “(r) Fails to comply with the requirements of ORS 652.120.

1 “(s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235,
2 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415,
3 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the facts
4 supporting the conviction and all intervening circumstances make the de-
5 termination to suspend, revoke or refuse to issue or renew the license con-
6 sistent with ORS 670.280.

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

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

17 “(b) The lack of public liability, personal injury or property damage in-
18 surance required under ORS 671.565;

19 “(c) The lack of workers’ compensation insurance that is required of the
20 licensee under ORS 671.562;

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

22 “(e) Conduct as a landscape construction professional or a landscape
23 contracting business that is dishonest;

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

26 “(g) The failure to notify the board of any unpaid court judgment, arbi-
27 tration award or administrative agency final order as required by ORS
28 671.563.

29 “(3) A person whose license is suspended or refused renewal under sub-
30 section (2) of this section may request a hearing within 90 days after re-

1 ceiving the notice of the suspension or refusal to renew. Except as provided
2 in this subsection, the board shall give a contested case hearing requested
3 under this subsection priority over other hearings and schedule the hearing
4 for the earliest practicable date. If a citation is issued to the person and the
5 order of suspension or refusal to renew will terminate by its terms if a court
6 renders a final judgment regarding the citation in favor of the person, the
7 person may request that the board hold the requested contested case hearing
8 in abeyance until after the court has rendered a final judgment.

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

12 “(5) The board may suspend, revoke or refuse to reissue the license of a
13 landscape contracting business, and may impose a civil penalty, all as pro-
14 vided under ORS 671.997 [(4)] (6), if the board determines, after notice and
15 opportunity for a hearing, that the landscape contracting business was
16 working with other landscape contracting businesses on the same task and
17 work site where one of the landscape contracting businesses is licensed as
18 an exempt independent contractor under ORS 671.525 (2)(b) and the total
19 number of landscape contracting businesses working on the task exceeded:

20 “(a) Two sole proprietors;

21 “(b) One partnership;

22 “(c) One corporation; or

23 “(d) One limited liability company.

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

26 **“SECTION 6. ORS 671.676 is repealed.**

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

30 **“(a) The President of the Senate shall appoint two members from**

1 among members of the Senate, one from the majority party and one
2 from the minority party.

3 “(b) The Speaker of the House of Representatives shall appoint two
4 members from among members of the House of Representatives, one
5 from the majority party and one from the minority party.

6 “(c) The Governor shall appoint at least three members as follows:

7 “(A) At least one member of the State Landscape Contractors
8 Board;

9 “(B) At least one landscape construction professional; and

10 “(C) At least one other person knowledgeable about the licensing
11 and regulation of landscape construction professionals.

12 “(2) The task force shall:

13 “(a) Review the licensure examination requirements for landscape
14 construction professionals under ORS 671.510 to 671.760 and rules
15 adopted under ORS 671.510 to 671.760;

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

23 “(c) Make recommendations to the Legislative Assembly on whether
24 the State Landscape Contractors Board should have its power trans-
25 ferred to the Construction Contractors Board.

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

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

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

1 **chairperson.**

2 **“(6) If there is a vacancy for any cause, the appointing authority**
3 **shall make an appointment to become immediately effective.**

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

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

9 **“(9) The task force shall make a report based on its recommen-**
10 **dations to the Legislative Assembly no later than the date of the**
11 **convening of the 2014 regular session of the Legislative Assembly as**
12 **specified in ORS 171.010, and the task force may file proposed legisla-**
13 **tive measures with the Legislative Counsel in the manner allowed by**
14 **both houses of the Legislative Assembly.**

15 **“(10) The Legislative Administration Committee shall provide staff**
16 **support to the task force.**

17 **“(11) Members of the task force who are not members of the Leg-**
18 **islative Assembly are not entitled to compensation, but may be reim-**
19 **bursed for actual and necessary travel and other expenses incurred by**
20 **them in the performance of their official duties in the manner and**
21 **amounts provided for in ORS 292.495. Claims for expenses incurred in**
22 **performing functions of the task force shall be paid out of funds ap-**
23 **propriated to the Legislative Administration Committee for purposes**
24 **of the task force.**

25 **“(12) All agencies of state government, as defined in ORS 174.111,**
26 **are directed to assist the task force in the performance of its duties**
27 **and, to the extent permitted by laws relating to confidentiality, to**
28 **furnish such information and advice as the members of the task force**
29 **consider necessary to perform their duties.**

30 **“SECTION 8. Section 7 of this 2013 Act is repealed on the date of**

1 **the convening of the 2014 regular session of the Legislative Assembly**
2 **as specified in ORS 171.010.**

3 **“SECTION 9. This 2013 Act being necessary for the immediate**
4 **preservation of the public peace, health and safety, an emergency is**
5 **declared to exist, and this 2013 Act takes effect on its passage.”.**

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