

**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,
3 671.676 and 671.997; 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 “**(6) The board shall adopt rules establishing a procedure for audit-**
7 **ing a select percentage of persons each year who are applying for re-**
8 **newal of a license to ensure that the persons audited are in compliance**
9 **with continuing education requirements under ORS 671.676 and any**
10 **rule adopted under ORS 671.676.**

11 “**SECTION 4.** ORS 671.676 is amended to read:

12 “671.676. (1) The State Landscape Contractors Board shall adopt rules
13 establishing continuing education requirements for landscape construction
14 professionals. **The rules adopted by the board shall include, but need**
15 **not be limited to, rules establishing the required number of hours and**
16 **course content for continuing education.** The board may not require
17 landscape construction professionals to take more than 10 hours of continu-
18 ing education every year.

19 “[*(2) The board may approve programs for purposes of continuing education*
20 *for landscape construction professionals and determine the number of hours to*
21 *be credited to the programs. The board shall ensure that continuing education*
22 *opportunities for landscape construction professionals are readily available.*]

23 “[*(3)*] **(2)** [*Programs approved by the board for continuing education pur-*
24 *poses must be*] **In adopting rules under subsection (1) of this section, the**
25 **board shall ensure that programs eligible for continuing education**
26 **credit are** designed to directly contribute to the professional competency of
27 landscape construction professionals. [*Approved programs*] **Programs eligi-**
28 **ble for credit** may include, but need not be limited to:

29 “(a) Professional development programs and technical meetings of profes-
30 sional associations for landscape contracting businesses or for related in-

1 dustries such as pesticide application or irrigation auditing;

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

3 “(c) Professional staff training programs by associations of landscape
4 construction professionals; and

5 “(d) Online or other forms of educational programs.

6 “[4] (3) The board may adopt rules establishing grounds for obtaining
7 a waiver of the continuing education requirements for landscape con-
8 struction professionals. The board may not allow a waiver for more than two
9 consecutive years except for a waiver due to military service, retirement,
10 disability, absence from the state, inactive status or extreme hardship.

11 **“SECTION 5.** ORS 671.997 is amended to read:

12 “671.997. (1) Except as provided in subsection [(4)] (6) of this section, a
13 person who violates any provision of ORS 671.510 to 671.760 or a rule adopted
14 pursuant to ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State
15 Landscape Contractors Board a civil penalty in an amount determined by the
16 board of not more than \$2,000 for each offense.

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

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

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

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

26 **“(3) If the person incurring a penalty under this section is otherwise
27 in compliance with the licensing requirements of ORS 671.510 to 671.760
28 and the penalty being imposed is not for a violation of any backflow
29 assembly installation requirement under ORS 671.615 or rules adopted
30 under ORS 671.615, the penalty imposed for the first or second occur-**

1 **rence of a particular violation may be remitted or mitigated on con-**
2 **dition that:**

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

5 **“(b) The person incurring the violation participate in an educational**
6 **program related to the professional competency of landscape con-**
7 **struction professionals to be determined by the board.**

8 **“[(2)] (4) [The board shall impose civil penalties under this section as pro-**
9 **vided in ORS 183.745] Any civil penalties imposed under this section**
10 **shall be imposed as provided in ORS 183.745.**

11 **“[(3)] (5) The provisions of this section are in addition to and not in lieu**
12 **of any other penalty or sanction provided by law.**

13 **“[(4)] (6) If a landscape contracting business commits an act described**
14 **under ORS 671.610 (5), the board [shall] may impose penalties and sanctions**
15 **on both the landscape contracting business to which the contract is awarded**
16 **and the landscape contracting business that awards the contract as follows:**

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

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

21 **“(c) Suspension of license or refusal to reissue license for six months for**
22 **a third offense;**

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

24 **“(e) Permanent revocation of the landscape contracting business’s license**
25 **for a fifth offense.**

26 **“SECTION 6. ORS 671.610 is amended to read:**

27 **“671.610. (1) In addition to any civil penalty assessed under ORS 671.997,**
28 **the State Landscape Contractors Board may suspend, revoke or refuse to is-**
29 **sue or renew the license of a landscape construction professional or land-**
30 **scape contracting business that does any of the following:**

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

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

5 “(c) Performs defective work.

6 “(d) Furnishes defective materials.

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

8 “(f) Violates a provision of ORS 671.510 to 671.760.

9 “(g) Fails to have a replacement bond, letter of credit or deposit on file
10 at the time of a termination, cancellation, reduction or withdrawal of the
11 bond, letter of credit or deposit required by ORS 671.690.

12 “(h) Fails to maintain public liability, personal injury and property dam-
13 age insurance as required by ORS 671.565 throughout a licensing period.

14 “(i) Fails to comply with ORS 671.527 or 671.562.

15 “(j) Fails to provide evidence of workers’ compensation coverage as de-
16 scribed in ORS 671.565.

17 “(k) Violates a voluntary compliance agreement entered into under ORS
18 646.605 to 646.652.

19 “(L) Performs work for which a permit is required under the state build-
20 ing code without obtaining the required permit, if the work results in the
21 filing of a claim with the board.

22 “(m) Violates a rule or order of the board.

23 “(n) Refuses to comply with a subpoena issued by the board.

24 “(o) Fails to pay in full any amount owed to a claimant under a final
25 order of the board or an arbitration award, or under a judgment rendered in
26 this or any other state.

27 “(p) Does not make payment, including any interest due, for labor or
28 materials contracted for by the person pursuant to a contract for a public
29 improvement within 90 days after the date the person receives payment from
30 a public contracting agency or, if the person is a subcontractor, from the

1 contractor.

2 “(q) Engages in conduct as a landscape construction professional or
3 landscape contracting business that is dishonest or fraudulent or that the
4 board finds injurious to the welfare of the public.

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

6 “(s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235,
7 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415,
8 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the facts
9 supporting the conviction and all intervening circumstances make the de-
10 termination to suspend, revoke or refuse to issue or renew the license con-
11 sistent with ORS 670.280.

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

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

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

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

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

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

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

1 “(g) The failure to notify the board of any unpaid court judgment, arbi-
2 tration award or administrative agency final order as required by ORS
3 671.563.

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

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

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

25 “(a) Two sole proprietors;

26 “(b) One partnership;

27 “(c) One corporation; or

28 “(d) One limited liability company.

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

1 **“SECTION 7. (1) The State Landscape Contractors Board shall es-**
2 **tablish a committee consisting of members of the board, landscape**
3 **construction professionals, a representative of a national certification**
4 **organization for the licensing of landscape professionals and other**
5 **persons knowledgeable about the licensing and regulation of landscape**
6 **construction professionals. The committee shall:**

7 **“(a) Review the licensure examination requirements for landscape**
8 **construction professionals under ORS 671.510 to 671.760 and rules**
9 **adopted under ORS 671.510 to 671.760; and**

10 **“(b) Recommend to the board any changes to the board’s adminis-**
11 **trative rules or recommend to the Legislative Assembly any changes**
12 **to statutes that are appropriate and necessary to ensure that licensure**
13 **examinations are designed to demonstrate that the applicant has the**
14 **necessary knowledge and skill to exercise the responsibilities of a**
15 **landscape construction professional.**

16 **“(2) The board shall make a report based on the recommendations**
17 **of the committee to the Legislative Assembly no later than the date**
18 **of the convening of the 2014 regular session of the Legislative Assem-**
19 **bly as specified in ORS 171.010, and may file proposed legislative**
20 **measures with the Legislative Counsel in the manner allowed by both**
21 **houses of the Legislative Assembly.**

22 **“(3) The board may implement any of the changes to administrative**
23 **rules that are authorized by state or federal law that are recommended**
24 **by the committee under subsection (1) of this section.**

25 **“SECTION 8. This 2013 Act being necessary for the immediate**
26 **preservation of the public peace, health and safety, an emergency is**
27 **declared to exist, and this 2013 Act takes effect on its passage.”.**