

**Construction Contractors Board (CCB)**  
**Testimony SB 1571**  
**Before the 78<sup>th</sup> Oregon Legislative Assembly**  
**Senate Committee on General Government, Consumer & Small Business Protection**  
**February 10, 2014, at 8:30 a.m.**  
**Hearing Room B**

**Committee Members:**

**Sen. Chip Shields, Chair**

**Sen. Larry George, Vice Chair**

**Sen. Herman Baertschiger, Jr.**

**Sen. Laurie Monnes Anderson**

**Sen. Floyd Prozanski**

**I. INTRODUCTION:**

Appearing Before Committee

- Stan Jessup, Business Manager, CCB

**II. PURPOSE OF THE BILL:**

SB 1571-1 prohibits certain practices by businesses providing restoration work on residential or commercial property, or property contents, following man-made disaster or natural. The bill voids contract that are contrary to the law. If such contracts are not void, the bill requires certain other protections. Violations are subject to a civil penalty not to exceed \$10,000 (twice the amount of ordinary violations).

**III. PROBLEM:**

When disasters – especially fires – occur, some companies arrive immediately upon the scene. These companies offer restoration work that may include boarding up the building, cleaning the contents, or repairing fire damage.

- There is concern that these companies may prey upon citizens' vulnerability immediately following a disaster.
- Citizens may agree to purchase restoration work services without fully understanding the services may not be covered by insurance.
- In some cases, citizens feel they did not receive appropriate value for the services rendered.

**IV. PROPOSED SOLUTION:**

SB 1571-1 attempts to address this problem in several ways.

- First, all businesses offering or providing restoration work must be licensed contractors.
  - Currently, a business that offers or provides “board up” services must be licensed with CCB.
  - Also, a business that provides construction repairs to disaster-damaged property must be licensed with CCB.
  - However, companies that offer cleaning services are not now licensed with CCB. Under SB 1571-1, companies that offer non-routine cleaning services undertaken because of disaster damage need contractor licenses.
- Second, the contracts for restoration work must contain terms not otherwise required in construction contracts. These include:

- An estimate of the total cost of the restoration work, or a stated hourly rate.
- A disclosure that construction contractors are prohibited from contracting for restoration work within proximity of the disaster. Proximity means 1,000 feet from the disaster area for 48 hours from the time of the disaster.
- Third, if the contractor contracts to provide restoration work within 1,000 feet of the disaster area for 48 hours from the time of the disaster, the contract is void. (Section 4(3)(a))
- If the contract for restoration work is not void, the customer has 3 days to rescind the contract.
- The law provides additional rights if the contract is rescinded.
  - The contractor may not recover for any service performed before the rescission.
  - The contractor must return any moneys received.
  - The contractor may not remove or recover any materials that it has attached to the victim's property.
  - The contractor must satisfy any liens or claims of subcontractors or material suppliers.
  - The contractor may not sell or assign the contract for 3 days
- Fourth, CCB may impose a civil penalty of double the amount currently permitted (\$10,000 rather than \$5,000) for violations of SB 1571-1.

### **CCB CONCERNS**

- While CCB takes no position on the policy of the bill, it does have some concerns with the practical implementation.
- Licensing:
  - It will be necessary to reach out to all individuals and businesses in the state that might provide cleaning services for disaster-damaged property. This could include janitorial services that clean damaged property, as well as specialty restoration damage cleaners.
  - Each such individual and business will need to do the following:
    - Complete 16 hours of training and pass a test.
    - Obtain a CCB endorsed license. The cost is \$325 for 2 years.
    - Post one or more bonds. If the business licenses as a Residential Specialty Contractor, the bond is \$15,000. As a Commercial Specialty Contractor, Level 2, the bond is \$20,000. In order to work on both residential and large commercial buildings, the business must supply both bonds.
    - Obtain public liability, personal injury and property damage insurance, with limits of between \$300,000 and \$2 million, depending on the endorsement.
    - Complete between 8 and 80 hours of continuing education each licensing period, depending on the endorsement.
- Different Contract Requirements:
  - It will be necessary to train all contractors on the different requirements for these particular contracts. This includes, for example, including an estimated cost, providing a three day right of rescission, and notifying customers of possible enhanced remedies.
  - It will be challenging to make sure that all contractors – including new ones – are fully familiar with these new, enhanced requirements.

- There may be some marketplace confusion over the various different rights of rescission. This already occurs between the 1-day (ORS 701.310) and 3-day rights (ORS 83.730) of rescission. With the addition of SB 1571-1, there will be 1-day, 3-day and “enhanced” 3-day rights of rescission – all depending upon the circumstances of the contract.
- Enhanced Penalties:
  - As a general rule, the higher the penalty, the more likely there is to be a challenge to the administrative action.
  - CCB anticipates there may be additional administrative hearings to challenge enhanced penalties under SB 1571-1.
- Resource Reallocation:
  - CCB may need to reallocate its resources to carry out the directives of SB 157-11. This may include:
    - Provide outreach to cleaning companies.
    - Educate contractors on the new law, including the new right of rescission.
    - Paying for additional administrative hearings – the cost of which includes both attorney representation and actual hearing costs.
  - Interpreting the New Law. There are two areas of the new law that may be challenging to implement.
    - The new law imposes certain requirements for contracts made in proximity to disasters. However, there is no requirement that these contracts be written. Under ORS 701.305, there only needs to be a *written* contract if the contract amount will exceed \$2,000. It may be difficult to evaluate conduct and enforce actions based on oral restoration contracts.
    - The law appears to void all contracts made in violation of the proximity limitations. (Section 4(3)(a)). Thus, we assume, contracts made within 1,000 feet of the disaster up to 48 hours from the time of the disaster are void. The next paragraph (Section 4(3)(b)) appears to apply to the same conduct but imposes additional requirements if the contract is *not void*. This seems inconsistent – if the contract is void (as opposed to voidable), there is no contract and no basis for the additional requirements.

**V. The agency is neutral on SB 1571.**