

D R A F T

SUMMARY

Allows State Landscape Contractors Board to assess contested case proceeding costs to person requesting that claim filed against board licensee be resolved through contested case proceeding. Caps assessment amount.

Authorizes landscape contracting business to install outdoor artificial turf. Creates exception.

Provides that qualifying complaints against landscape contracting business that is licensed construction contractor may be filed with both Construction Contractors Board and State Landscape Contractors Board.

Provides that landscape contracting business performing authorized work may subcontract part of work to general or specialty contractor licensed by Construction Contractors Board.

Expands activities landscape contracting business may perform regarding ornamental water features, drainage systems, irrigation systems, fences, decks, arbors, patios, landscape edging, driveways, walkways and retaining walls.

Authorizes administrator or employee of State Landscape Contractors Board to issue stop work order on behalf of board.

Increases amount requirement for landscape contracting business public liability, personal injury and property damage insurance.

Increases time available for landscape contracting business to provide notice of address change to State Landscape Contractors Board.

Provides that requirement for written contract applies to landscaping work for which landscape contracting business charges \$2,000 or more.

Changes cap on State Landscape Contractors Board requirements for landscape construction professional continuing education.

Increases bond for landscape contracting business charging \$50,000 or more for landscaping job. Requires that bonds for landscape contracting businesses provide coverage for certain activities regarding trees.

Makes imposition of civil penalties for violations of landscape contracting laws permissive. Makes imposition of license sanctions for violations of laws regarding independent contractors doing landscaping work permissive.

A BILL FOR AN ACT

1
2 Relating to landscaping; creating new provisions; and amending ORS 671.520,
3 671.555, 671.565, 671.603, 671.625, 671.676, 671.690 and 671.997.

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

5 **SECTION 1. Sections 2 to 5 of this 2015 Act are added to and made**
6 **a part of ORS 671.510 to 671.760.**

7 **SECTION 2. (1) If a party requests under ORS 671.703 (5) that a**
8 **claim be resolved by means of a contested case proceeding, the State**
9 **Landscape Contractors Board may assess the party the reasonable**
10 **costs of the contested case proceeding. For purposes of this subsection,**
11 **the cost of a contested case proceeding includes any costs the board**
12 **incurs on or after the date the party appeals a board order issued un-**
13 **der ORS 671.703 (1) or, if the appeal is by another party, costs that the**
14 **board incurs after delivery to the board of a request in writing that**
15 **the claim be resolved by means of a contested case proceeding. Rea-**
16 **sonable costs that the board assesses under this section may include,**
17 **but are not limited to, investigation costs, attorney fees, discovery**
18 **costs and administrative law judge costs. Except as provided in sub-**
19 **section (2) of this section, the reasonable costs assessed under this**
20 **section may not exceed \$5,000.**

21 **(2) The board may increase the limit on reasonable costs established**
22 **in subsection (1) of this section every five years, based on changes in**
23 **the Portland-Salem, OR-WA Consumer Price Index for All Urban**
24 **Consumers for All Items as published by the Bureau of Labor Statis-**
25 **tics of the United States Department of Labor.**

26 **SECTION 3. (1) As used in this section, “sports field” means one**
27 **or more areas of a property that total more than _____ square feet**
28 **of artificial turf and are designed to be used primarily for sport or**
29 **other athletic activities.**

30 **(2) Notwithstanding ORS 701.005 and 701.021, except as provided in**
31 **this section, a landscape contracting business may prepare a site for,**

1 **install and maintain artificial turf at an outdoor location. This section**
2 **does not authorize a landscape contracting business to prepare a site**
3 **for, install or maintain artificial turf at a sports field.**

4 **SECTION 4. (1) A person may file complaints against a licensed**
5 **landscape contracting business with both the Construction Contrac-**
6 **tors Board and the State Landscape Contractors Board regarding the**
7 **same work if:**

8 **(a) The landscape contracting business holds a license as a con-**
9 **struction contractor issued under ORS chapter 701; and**

10 **(b) The complaint to the Construction Contractors Board qualifies**
11 **for filing under ORS chapter 701 and the complaint to the State**
12 **Landscape Contractors Board qualifies for filing under ORS 671.510 to**
13 **671.760.**

14 **(2) Subsection (1) of this section does not expand the authority of**
15 **the Construction Contractors Board or State Landscape Contractors**
16 **Board to resolve a complaint or pay a claim. A determination by either**
17 **board regarding a complaint or claim is not binding on the other**
18 **board. The total amount paid to a person described in subsection (1)**
19 **of this section by the boards may not exceed the damages sustained**
20 **by the person. The State Landscape Contractors Board may require a**
21 **person who files a complaint against a landscape contracting business**
22 **to inform the board of any complaint the person files with the Con-**
23 **struction Contractors Board against the business.**

24 **SECTION 5. Notwithstanding ORS 701.005 or 701.021, a landscape**
25 **contracting business that arranges for, undertakes or submits a bid**
26 **to undertake a project that the business is authorized to perform un-**
27 **der ORS 671.510 to 671.760 may subcontract with a general or specialty**
28 **contractor licensed under ORS chapter 701 for the contractor to per-**
29 **form work within the scope of the contractor's license endorsement**
30 **on the project.**

31 **SECTION 6. ORS 671.520 is amended to read:**

1 671.520. As used in ORS 671.510 to 671.760, unless the context requires
2 otherwise:

3 (1) "Landscape construction professional" means an individual who for
4 compensation or with the intent to be compensated performs or supervises
5 activities requiring the art, ability, experience, knowledge, science and skill
6 to:

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

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

10 (c) [*Construct*] **Plan, install, maintain** or repair ornamental water fea-
11 tures, drainage systems or irrigation systems; **or**

12 [*(d) Maintain irrigation systems with the use of compressed air; or*]

13 [*(e)*] **(d) Plan, [or] install, maintain or repair** fences, decks, arbors,
14 patios, landscape edging, driveways, walkways or retaining walls.

15 (2) "Landscape contracting business" means a business that for compen-
16 sation or with the intent to be compensated arranges, submits a bid, or oth-
17 erwise offers or contracts, for the performance of activities described in
18 subsection (1) of this section.

19 (3) "Licensee" means a person that is licensed under ORS 671.510 to
20 671.760 as a landscape construction professional or landscape contracting
21 business.

22 (4) "Nursery stock" means nursery stock:

23 (a) As defined by ORS 571.005 other than stock grown for commercial re-
24 sale or reforestation; or

25 (b) As defined by the State Landscape Contractors Board by rule.

26 (5) "Ornamental water features" means fountains, ponds, waterfalls,
27 man-made streams and other decorative water-related constructions as iden-
28 tified by the board by rule.

29 **SECTION 7.** ORS 671.555 is amended to read:

30 671.555. (1) The State Landscape Contractors Board may investigate the
31 activities of any person engaged in the landscape contracting business to

1 determine compliance with ORS 671.510 to 671.760.

2 (2) With the approval of the city or county, the board may conduct in-
3 vestigations with city or county inspectors, provided that the city or county
4 is reimbursed by the board for the costs of such investigations.

5 (3) Any inspector or investigator authorized by the board to determine
6 compliance with ORS 671.510 to 671.760 may require any person who is en-
7 gaged in any activity regulated by ORS 671.510 to 671.760 to demonstrate
8 proof of compliance with the licensing requirements of ORS 671.510 to
9 671.760. If a person who is contracting directly with the owner of the prop-
10 erty does not demonstrate proof of compliance with the licensing require-
11 ments of ORS 671.510 to 671.760, the inspector or investigator may give
12 notice of noncompliance to the person.

13 (4) *[The]* **A** notice of noncompliance **given under subsection (3) of this**
14 **section** shall be in writing, shall specifically state that the person is not in
15 compliance with the licensing requirements of ORS 671.510 to 671.760 and
16 shall provide that unless the person demonstrates proof of compliance within
17 two days of the date of the notice, the inspector or investigator may by order
18 stop all work then being done by the person. The notice of noncompliance
19 shall be served upon the person and shall be served upon or delivered to the
20 owner of each property upon which the person is then performing work under
21 contract. If more than one person is the owner of any such property, a copy
22 of the notice need be given to only one of such persons.

23 (5) If after receipt of *[the]* **a** notice of noncompliance **under subsection**
24 **(3) of this section** the person fails within the two-day period specified in
25 the notice to demonstrate proof of compliance with the licensing require-
26 ments of ORS 671.510 to 671.760, the inspector or investigator may order the
27 work stopped by notice in writing served on any persons engaged in the ac-
28 tivity. Any person so notified shall stop such work until proof of compliance
29 is demonstrated. However, the inspector or investigator may not order the
30 work stopped until at least two days after the copies of the notice of non-
31 compliance have been served upon or delivered to the owners.

1 [(4)] **(6)** Notwithstanding subsection [(3)] **(5)** of this section, the board
2 may order landscaping work stopped immediately if the landscape contract-
3 ing business working on a worksite cannot demonstrate that the business
4 has been licensed by the board at any time within the two years immediately
5 preceding work on the worksite. **The administrator or any employee of**
6 **the board may issue an order under this subsection on behalf of the**
7 **board.**

8 [(5)] **(7)** The board has the power to administer oaths, issue notices and
9 subpoenas in the name of the board, compel the attendance of witnesses and
10 the production of evidence, hold hearings and perform such other acts as are
11 reasonably necessary to carry out its duties under ORS 671.510 to 671.760.

12 [(6)] **(8)** If any person fails to comply with a subpoena issued under sub-
13 section [(5)] **(7)** of this section or refuses to testify on matters on which the
14 person may be lawfully interrogated, the board shall compel obedience in the
15 manner provided in ORS 183.440.

16 **SECTION 8.** ORS 671.565 is amended to read:

17 671.565. (1) Each person applying for a landscape contracting business li-
18 cense must:

19 (a) Pay to the State Landscape Contractors Board the applicable land-
20 scape contracting business license fee established by the board under ORS
21 671.650.

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

25 (c) Submit the names of all employees who are licensed landscape con-
26 struction professionals.

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

28 (e) File with the board a certificate of public liability, personal injury and
29 property damage insurance covering the work of the landscape contracting
30 business that is subject to ORS 671.510 to 671.760 for an amount not less than
31 ~~[\$100,000]~~ **\$500,000.**

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

4 (2)(a) If an applicant for licensing under this section qualifies to be clas-
5 sified as a nonexempt independent contractor, the applicant shall provide the
6 employer identification number of the applicant and evidence satisfactory to
7 the board that the applicant provides workers' compensation insurance cov-
8 erage for all employees of the landscape contracting business.

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

18 (3) At the time of application for a license, for renewal of a license in
19 active status or for return of a license to active status, the applicant shall
20 provide evidence satisfactory to the board that the public liability, personal
21 injury and property damage insurance required by this section and any
22 workers' compensation required of the applicant under ORS 671.527 or
23 671.562 is in effect. During a license period, the licensee shall provide, to the
24 extent required by the board, satisfactory evidence of continued public li-
25 ability, personal injury and property damage insurance coverage and, if re-
26 quired under ORS 671.562, workers' compensation insurance coverage.

27 **SECTION 9.** ORS 671.603 is amended to read:

28 671.603. (1) A landscape construction professional or person operating as
29 a landscape contracting business shall notify the State Landscape Contrac-
30 tors Board of a change of address for the professional or business that occurs
31 while the professional or business is licensed by the board or within one year

1 after a license expires. The landscape construction professional or landscape
2 contracting business shall ensure that the board receives notice of the
3 change of address no later than the [10th] **30th** day after the change of ad-
4 dress occurs.

5 (2) Initial notice of a contested case or arbitration directed by the board
6 to the last-known address of record for a landscape construction professional
7 or landscape contracting business is considered delivered to the professional
8 or business when deposited in the United States mail and sent registered,
9 certified or post office receipt secured. Any other communication directed
10 by the board to the last-known address of record for a landscape construction
11 professional or landscape contracting business is considered delivered to the
12 professional or business when deposited in the United States mail, regular
13 mail.

14 **SECTION 10.** ORS 671.625 is amended to read:

15 671.625. (1) The State Landscape Contractors Board shall by rule adopt
16 minimum standards for written contracts and billings of the landscape con-
17 tracting businesses. The standards shall set forth requirements for informa-
18 tion that must be contained in contracts and billings. The information
19 required shall be any information the board determines is necessary to pro-
20 vide protection for consumers of the services and materials provided by
21 landscape contracting businesses.

22 (2) Work by a landscape contracting business subject to ORS 671.510 to
23 671.760 **for which the business charges \$2,000 or more** shall only be per-
24 formed subject to a written contract. Any contract or billing for such work
25 must conform to the standards adopted under subsection (1) of this section.

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

29 **SECTION 11.** ORS 671.676 is amended to read:

30 671.676. (1) The State Landscape Contractors Board shall adopt rules es-
31 tablishing continuing education requirements for landscape construction

1 professionals. The board may not require landscape construction profes-
2 sionals to take more than *[10 hours of continuing education every year.]*:

3 **(a) Sixteen hours of continuing education during a two-year period**
4 **if the landscape construction professional has five years or less of ex-**
5 **perience as an active licensee on the beginning date of the period; or**

6 **(b) Eight hours of continuing education during a two-year period**
7 **if the landscape construction professional has more than five years of**
8 **experience as an active licensee on the beginning date of the period.**

9 (2) The board may approve programs for purposes of continuing education
10 for landscape construction professionals and determine the number of hours
11 to be credited to the programs. The board shall ensure that continuing edu-
12 cation opportunities for landscape construction professionals are readily
13 available.

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

18 (a) Professional development programs and technical meetings of profes-
19 sional associations for landscape contracting businesses or for related in-
20 dustries such as pesticide application or irrigation auditing;

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

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

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

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

30 **SECTION 12.** ORS 671.690 is amended to read:

31 671.690. (1) An applicant for a license as a landscape contracting business

1 shall file with the State Landscape Contractors Board a surety bond with
2 one or more corporate sureties authorized to do business in this state, or an
3 irrevocable letter of credit issued by an insured institution, as defined in
4 ORS 706.008. The amount of the bond or letter of credit shall be:

5 (a) \$3,000 for an applicant, unless the applicant is described [*in paragraph*
6 *(b), (c) or (d)*] **under paragraphs (b) to (e)** of this subsection.

7 (b) \$10,000 for an applicant who, not in conjunction with the performance
8 of landscaping work, constructs fences, decks, arbors, patios, landscape edg-
9 ing, driveways, walkways or retaining walls, unless the applicant is made
10 subject to paragraph (d) **or (e)** of this subsection by work on other jobs
11 performed by the applicant.

12 (c) \$10,000 for an applicant who charges more than \$10,000, but less than
13 \$25,000, for a landscape job.

14 (d) \$15,000 for an applicant who charges \$25,000 or more, **but less than**
15 **\$50,000**, for a landscape job.

16 (e) **\$20,000 for an applicant who charges \$50,000 or more for a land-**
17 **scape job.**

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

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

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

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

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

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

31 (a) Backflow assembly testing services provided by employees of the

1 landscape contracting business who are certified under ORS 448.279;

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

5 (c) The installation by the landscape contracting business of landscape
6 irrigation control wiring and outdoor landscape lighting as described in ORS
7 479.940[.]; **and**

8 **(d) The removal or pruning of a tree, removal of limbs or stumps**
9 **and tree or limb guying.**

10 (4) In lieu of the surety bond or letter of credit, the applicant may file
11 with the board, under the same terms and conditions as when a bond is filed,
12 a deposit in cash or negotiable securities acceptable to the board.

13 (5) The bond, letter of credit or deposit must be continuously on file with
14 the board in the amount required by this section and is for the exclusive
15 purpose of payment of final orders and arbitration awards in accordance with
16 ORS 671.703. Upon termination or cancellation of the bond, withdrawal of
17 the deposit or reduction of the bond, letter of credit or deposit to less than
18 the required amount, the licensee shall immediately:

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

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

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

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

28 **SECTION 13.** ORS 671.997 is amended to read:

29 671.997. (1) *[Except as provided in subsection (4) of this section,]* **The State**
30 **Landscape Contractors Board may impose a civil penalty against a**
31 **person who violates any provision of ORS 671.510 to 671.760 or a rule adopted**

1 pursuant to ORS 670.310, 670.605 or 671.670 *[shall forfeit and pay to the State*
2 *Landscape Contractors Board a civil penalty in an amount determined by the*
3 *board of not more than \$2,000 for each offense]*. **The board shall determine**
4 **the amount of the civil penalty, not to exceed \$2,000 for each offense.**

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

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

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

13 *[(a) A civil penalty of not less than \$500 nor more than \$1,000 for a first*
14 *offense;]*

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

17 *[(c) Suspension of license or refusal to reissue license for six months for a*
18 *third offense;]*

19 *[(d) Revocation of license for three years for a fourth offense; and]*

20 *[(e) Permanent revocation of the landscape contracting business's license for*
21 *a fifth offense.]*

22 **(4)(a) If a landscape contracting business commits an act described**
23 **under ORS 671.610 (5), the board may assess civil penalties or impose**
24 **license sanctions under this subsection on the landscape contracting**
25 **business to which the contract is awarded, the landscape contracting**
26 **business that awards the contract, or both.**

27 **(b) Notwithstanding subsection (1) of this section, a civil penalty**
28 **imposed on a landscape contracting business for a first offense of**
29 **committing an act described under ORS 671.610 (5) may not exceed**
30 **\$1,000.**

31 **(c) In addition to any civil penalty assessed by the board, if a**

1 **landscape contracting business has two or more prior offenses for**
2 **committing acts described under ORS 671.610 (5), the board may im-**
3 **pose license sanctions on the landscape contracting business. The li-**
4 **cence sanctions:**

5 **(A) For a third offense may not exceed the suspension of, or refusal**
6 **to reissue, a license for six months;**

7 **(B) For a fourth offense may not exceed revocation of the license**
8 **for three years; or**

9 **(C) For a fifth or subsequent offense may provide for permanent**
10 **revocation of the license.**

11 **SECTION 14. (1) Section 2 of this 2015 Act applies to a contested**
12 **case proceeding for which a party delivers a request in writing to the**
13 **State Landscape Contractors Board on or after the effective date of**
14 **this 2015 Act.**

15 **(2) The amendments to ORS 671.520 by section 6 of this 2015 Act**
16 **apply to activities performed on or after the effective date of this 2015**
17 **Act.**

18 **(3) The amendments to ORS 671.565 by section 8 of this 2015 Act**
19 **apply to applications for issuance, renewal or return of a license that**
20 **the board receives on or after the effective date of this 2015 Act.**

21 **(4) The amendments to ORS 671.603 by section 9 of this 2015 Act**
22 **apply to changes of address occurring 10 days prior to the effective**
23 **date of this 2015 Act or later.**

24 **(5) The amendments to ORS 671.625 by section 10 of this 2015 Act**
25 **apply to work performed on or after the effective date of this 2015 Act.**

26 **(6) The amendments to ORS 671.676 by section 11 of this 2015 Act**
27 **apply to continuing education requirements imposed for periods that**
28 **commence on or after the effective date of this 2015 Act.**

29 **(7) The amendments to ORS 671.690 by section 12 of this 2015 Act**
30 **apply to bonds or letters of credit:**

31 **(a) Filed with a license application that the board receives on or**

1 **after the effective date of this 2015 Act; or**

2 **(b) Filed as a replacement or additional bond on or after the effec-**
3 **tive date of this 2015 Act.**

4 **(8) The amendments to ORS 671.997 by section 13 of this 2015 Act**
5 **apply to civil penalties or license sanctions that the board imposes on**
6 **or after the effective date of this 2015 Act for an offense committed**
7 **before, on or after the effective date of this 2015 Act.**

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