

# Senate Bill 580

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION

## 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**.

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

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

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

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

**SECTION 2. (1) If a party requests under ORS 671.703 (5) that a claim be resolved by means of a contested case proceeding, the State Landscape Contractors Board may assess the party the reasonable costs of the contested case proceeding. For purposes of this subsection, the cost of a contested case proceeding includes any costs the board incurs on or after the date the party appeals a board order issued under ORS 671.703 (1) or, if the appeal is by another party, costs that the board incurs after delivery to the board of a request in writing that the claim be resolved by means of a contested case proceeding. Reasonable costs that the board assesses under this section may include, but are not limited to, investigation costs, attorney fees, discovery costs and administrative law judge costs. Except as provided in subsection (2) of this section, the reasonable costs assessed under this section may not**

**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 exceed \$5,000.

2 (2) The board may increase the limit on reasonable costs established in subsection (1) of  
 3 this section every five years, based on changes in the Portland-Salem, OR-WA Consumer  
 4 Price Index for All Urban Consumers for All Items as published by the Bureau of Labor  
 5 Statistics of the United States Department of Labor.

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

9 (2) Notwithstanding ORS 701.005 and 701.021, except as provided in this section, a land-  
 10 scape contracting business may prepare a site for, install and maintain artificial turf at an  
 11 outdoor location. This section does not authorize a landscape contracting business to prepare  
 12 a site for, install or maintain artificial turf at a sports field.

13 **SECTION 4.** (1) A person may file complaints against a licensed landscape contracting  
 14 business with both the Construction Contractors Board and the State Landscape Contractors  
 15 Board regarding the same work if:

16 (a) The landscape contracting business holds a license as a construction contractor is-  
 17 sued under ORS chapter 701; and

18 (b) The complaint to the Construction Contractors Board qualifies for filing under ORS  
 19 chapter 701 and the complaint to the State Landscape Contractors Board qualifies for filing  
 20 under ORS 671.510 to 671.760.

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

29 **SECTION 5.** Notwithstanding ORS 701.005 or 701.021, a landscape contracting business  
 30 that arranges for, undertakes or submits a bid to undertake a project that the business is  
 31 authorized to perform under ORS 671.510 to 671.760 may subcontract with a general or spe-  
 32 cialty contractor licensed under ORS chapter 701 for the contractor to perform work within  
 33 the scope of the contractor’s license endorsement on the project.

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

35 671.520. As used in ORS 671.510 to 671.760, unless the context requires otherwise:

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

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

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

41 (c) [*Construct*] **Plan, install, maintain** or repair ornamental water features, drainage systems  
 42 or irrigation systems; **or**

43 [*Maintain irrigation systems with the use of compressed air; or*]

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

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

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

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

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

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

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

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

13 671.555. (1) The State Landscape Contractors Board may investigate the activities of any person  
 14 engaged in the landscape contracting business to determine compliance with ORS 671.510 to 671.760.

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

18 (3) Any inspector or investigator authorized by the board to determine compliance with ORS  
 19 671.510 to 671.760 may require any person who is engaged in any activity regulated by ORS 671.510  
 20 to 671.760 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to  
 21 671.760. If a person who is contracting directly with the owner of the property does not demonstrate  
 22 proof of compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or in-  
 23 vestigator may give notice of noncompliance to the person.

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

32 (5) If after receipt of ~~[the]~~ **a** notice of noncompliance **under subsection (3) of this section** the  
 33 person fails within the two-day period specified in the notice to demonstrate proof of compliance  
 34 with the licensing requirements of ORS 671.510 to 671.760, the inspector or investigator may order  
 35 the work stopped by notice in writing served on any persons engaged in the activity. Any person  
 36 so notified shall stop such work until proof of compliance is demonstrated. However, the inspector  
 37 or investigator may not order the work stopped until at least two days after the copies of the notice  
 38 of noncompliance have been served upon or delivered to the owners.

39 ~~[(4)]~~ **(6)** Notwithstanding subsection ~~[(3)]~~ **(5)** of this section, the board may order landscaping  
 40 work stopped immediately if the landscape contracting business working on a worksite cannot  
 41 demonstrate that the business has been licensed by the board at any time within the two years im-  
 42 mediately preceding work on the worksite. **The administrator or any employee of the board may**  
 43 **issue an order under this subsection on behalf of the board.**

44 ~~[(5)]~~ **(7)** The board has the power to administer oaths, issue notices and subpoenas in the name  
 45 of the board, compel the attendance of witnesses and the production of evidence, hold hearings and

1 perform such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to  
 2 671.760.

3 [(6)] (8) If any person fails to comply with a subpoena issued under subsection [(5)] (7) of this  
 4 section or refuses to testify on matters on which the person may be lawfully interrogated, the board  
 5 shall compel obedience in the manner provided in ORS 183.440.

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

7 671.565. (1) Each person applying for a landscape contracting business license must:

8 (a) Pay to the State Landscape Contractors Board the applicable landscape contracting business  
 9 license fee established by the board under ORS 671.650.

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

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

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

14 (e) File with the board a certificate of public liability, personal injury and property damage in-  
 15 surance covering the work of the landscape contracting business that is subject to ORS 671.510 to  
 16 671.760 for an amount not less than [100,000] **\$500,000**.

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

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

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

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

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

39 671.603. (1) A landscape construction professional or person operating as a landscape contract-  
 40 ing business shall notify the State Landscape Contractors Board of a change of address for the  
 41 professional or business that occurs while the professional or business is licensed by the board or  
 42 within one year after a license expires. The landscape construction professional or landscape con-  
 43 tracting business shall ensure that the board receives notice of the change of address no later than  
 44 the [10th] **30th** day after the change of address occurs.

45 (2) Initial notice of a contested case or arbitration directed by the board to the last-known ad-

1 dress of record for a landscape construction professional or landscape contracting business is con-  
 2 sidered delivered to the professional or business when deposited in the United States mail and sent  
 3 registered, certified or post office receipt secured. Any other communication directed by the board  
 4 to the last-known address of record for a landscape construction professional or landscape con-  
 5 tracting business is considered delivered to the professional or business when deposited in the  
 6 United States mail, regular mail.

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

8 671.625. (1) The State Landscape Contractors Board shall by rule adopt minimum standards for  
 9 written contracts and billings of the landscape contracting businesses. The standards shall set forth  
 10 requirements for information that must be contained in contracts and billings. The information re-  
 11 quired shall be any information the board determines is necessary to provide protection for con-  
 12 sumers of the services and materials provided by landscape contracting businesses.

13 (2) Work by a landscape contracting business subject to ORS 671.510 to 671.760 **for which the**  
 14 **business charges \$2,000 or more** shall only be performed subject to a written contract. Any con-  
 15 tract or billing for such work must conform to the standards adopted under subsection (1) of this  
 16 section.

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

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

20 671.676. (1) The State Landscape Contractors Board shall adopt rules establishing continuing  
 21 education requirements for landscape construction professionals. The board may not require land-  
 22 scape construction professionals to take more than [*10 hours of continuing education every year.*]:

23 (a) **Sixteen hours of continuing education during a two-year period if the landscape con-**  
 24 **struction professional has five years or less of experience as an active licensee on the be-**  
 25 **ginning date of the period; or**

26 (b) **Eight hours of continuing education during a two-year period if the landscape con-**  
 27 **struction professional has more than five years of experience as an active licensee on the**  
 28 **beginning date of the period.**

29 (2) The board may approve programs for purposes of continuing education for landscape con-  
 30 struction professionals and determine the number of hours to be credited to the programs. The board  
 31 shall ensure that continuing education opportunities for landscape construction professionals are  
 32 readily available.

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

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

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

40 (c) Professional staff training programs by associations of landscape construction professionals;  
 41 and

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

43 (4) The board may adopt rules establishing grounds for obtaining a waiver of the continuing  
 44 education requirements for landscape construction professionals. The board may not allow a waiver  
 45 for more than two consecutive years except for a waiver due to military service, retirement, disa-

1 bility, absence from the state, inactive status or extreme hardship.

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

3 671.690. (1) An applicant for a license as a landscape contracting business shall file with the  
4 State Landscape Contractors Board a surety bond with one or more corporate sureties authorized  
5 to do business in this state, or an irrevocable letter of credit issued by an insured institution, as  
6 defined in ORS 706.008. The amount of the bond or letter of credit shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (7) The landscape contracting business is responsible for all work subject to ORS 671.510 to  
 5 671.760 that is performed or contracted for by the business.

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

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

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

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

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

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

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

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

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

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

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

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

31 **(c) In addition to any civil penalty assessed by the board, if a landscape contracting**  
 32 **business has two or more prior offenses for committing acts described under ORS 671.610 (5),**  
 33 **the board may impose license sanctions on the landscape contracting business. The license**  
 34 **sanctions:**

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

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

38 **(C) For a fifth or subsequent offense may provide for permanent revocation of the li-**  
 39 **cense.**

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

43 **(2) The amendments to ORS 671.520 by section 6 of this 2015 Act apply to activities per-**  
 44 **formed on or after the effective date of this 2015 Act.**

45 **(3) The amendments to ORS 671.565 by section 8 of this 2015 Act apply to applications for**

1 issuance, renewal or return of a license that the board receives on or after the effective date  
2 of this 2015 Act.

3 (4) The amendments to ORS 671.603 by section 9 of this 2015 Act apply to changes of ad-  
4 dress occurring 10 days prior to the effective date of this 2015 Act or later.

5 (5) The amendments to ORS 671.625 by section 10 of this 2015 Act apply to work per-  
6 formed on or after the effective date of this 2015 Act.

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

10 (7) The amendments to ORS 671.690 by section 12 of this 2015 Act apply to bonds or let-  
11 ters of credit:

12 (a) Filed with a license application that the board receives on or after the effective date  
13 of this 2015 Act; or

14 (b) Filed as a replacement or additional bond on or after the effective date of this 2015  
15 Act.

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

19