

**PROPOSED AMENDMENTS TO
SENATE BILL 580**

1 On page 1 of the printed bill, line 2, delete “671.520,”.

2 In line 3, after “671.690” insert “, 671.695”.

3 Delete lines 5 through 16 and delete pages 2 through 8 and insert:

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

6 **“SECTION 2. (1) If a party requests a hearing under ORS 671.703 (1)**
7 **that is resolved by arbitration, or requests under ORS 671.703 (5) that**
8 **a claim be resolved by means of a contested case proceeding, the State**
9 **Landscape Contractors Board may assess the requesting party the**
10 **reasonable costs of the resulting arbitration or contested case pro-**
11 **ceeding. For purposes of this subsection, the cost of an arbitration**
12 **hearing or contested case proceeding includes the claim resolution**
13 **costs that the board incurs on or after the date the board receives the**
14 **hearing or proceeding request, including, but not limited to, investi-**
15 **gation costs, attorney fees, discovery costs and costs for Office of Ad-**
16 **ministrative Hearings services. Except as provided in subsection (2)**
17 **of this section, the reasonable costs assessed under this section may**
18 **not exceed \$5,000. If both parties make the same request under this**
19 **subsection, the board shall divide the reasonable cost assessment for**
20 **that request equally between the parties.**

21 **“(2) The board may increase the limit on reasonable costs estab-**
22 **lished in subsection (1) of this section every five years, based on**

1 changes in the Portland-Salem, OR-WA Consumer Price Index for All
2 Urban Consumers for All Items as published by the Bureau of Labor
3 Statistics of the United States Department of Labor.

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

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

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

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

19 **“(b) The complaint to the Construction Contractors Board qualifies**
20 **for filing under ORS chapter 701 and the complaint to the State**
21 **Landscape Contractors Board qualifies for filing under ORS 671.510 to**
22 **671.760.**

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

1 to inform the board of any complaint the person files with the Con-
2 struction Contractors Board against the business.

3 **“SECTION 5. Notwithstanding ORS 701.005 or 701.021, a landscape**
4 **contracting business that arranges for, undertakes or submits a bid**
5 **to undertake a project that the business is authorized to perform un-**
6 **der ORS 671.510 to 671.760 may subcontract with a general or specialty**
7 **contractor licensed under ORS chapter 701 for the contractor to per-**
8 **form work within the scope of the contractor’s license endorsement**
9 **on the project.**

10 **“SECTION 6. A landscape construction professional may prepare**
11 **plans and drawings for a landscape irrigation system, including, but**
12 **not limited to, plans and drawings that identify the positioning, num-**
13 **ber, type and model of pumps, piping, valves, sprinklers, nozzles**
14 **emitters, filters, controllers and other components for the system, if**
15 **the landscape construction professional:**

16 **“(1) Is licensed by the State Landscape Contractors Board under**
17 **ORS 671.615 to install backflow assemblies for irrigation systems; or**

18 **“(2) Has irrigation system, backflow assembly or other specialized**
19 **qualifications as established by the board by rule.**

20 **“SECTION 7. ORS 671.555 is amended to read:**

21 **“671.555. (1) The State Landscape Contractors Board may investigate the**
22 **activities of any person engaged in the landscape contracting business to**
23 **determine compliance with ORS 671.510 to 671.760.**

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

27 **“(3) Any inspector or investigator authorized by the board to determine**
28 **compliance with ORS 671.510 to 671.760 may require any person who is en-**
29 **gaged in any activity regulated by ORS 671.510 to 671.760 to demonstrate**
30 **proof of compliance with the licensing requirements of ORS 671.510 to**

1 671.760. If a person who is contracting directly with the owner of the prop-
2 erty does not demonstrate proof of compliance with the licensing require-
3 ments of ORS 671.510 to 671.760, the inspector or investigator may give
4 notice of noncompliance to the person.

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

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

24 “[*(4)*] **(6)** Notwithstanding subsection [*(3)*] **(5)** of this section, the board
25 may order landscaping work stopped immediately if the landscape contract-
26 ing business working on a worksite cannot demonstrate that the business
27 has been licensed by the board at any time within the two years immediately
28 preceding work on the worksite. **The administrator or any employee of**
29 **the board may issue an order under this subsection on behalf of the**
30 **board.**

1 “[5] (7) The board has the power to administer oaths, issue notices and
2 subpoenas in the name of the board, compel the attendance of witnesses and
3 the production of evidence, hold hearings and perform such other acts as are
4 reasonably necessary to carry out its duties under ORS 671.510 to 671.760.

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

9 **“SECTION 8.** ORS 671.565 is amended to read:

10 “671.565. (1) Each person applying for a landscape contracting business
11 license must:

12 “(a) Pay to the State Landscape Contractors Board the applicable land-
13 scape contracting business license fee established by the board under ORS
14 671.650.

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

18 “(c) Submit the names of all employees who are licensed landscape con-
19 struction professionals.

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

21 “(e) File with the board a certificate of public liability, personal injury
22 and property damage insurance covering the work of the landscape con-
23 tracting business that is subject to ORS 671.510 to 671.760 for an amount not
24 less than [~~\$100,000~~] **\$500,000**.

25 “(f) Indicate, as set forth in ORS 670.600, the basis under which the ap-
26 plicant qualifies as an independent contractor and the class of independent
27 contractor described in ORS 671.525 for which the applicant qualifies.

28 “(2)(a) If an applicant for licensing under this section qualifies to be
29 classified as a nonexempt independent contractor, the applicant shall provide
30 the employer identification number of the applicant and evidence satisfactory

1 to the board that the applicant provides workers' compensation insurance
2 coverage for all employees of the landscape contracting business.

3 “(b) If an applicant for licensing under this section qualifies to be clas-
4 sified as an exempt independent contractor and has entered into a contract
5 with a worker leasing company or temporary service provider for the sup-
6 plying of workers to the landscape contracting business, the applicant shall
7 provide evidence satisfactory to the board that the applicant has verified the
8 maintenance of workers' compensation insurance coverage for all leasing
9 company or service provider employees supplied for use by the business. As
10 used in this paragraph, ‘worker leasing company’ and ‘temporary service
11 provider’ have the meanings given those terms in ORS 656.850.

12 “(3) At the time of application for a license, for renewal of a license in
13 active status or for return of a license to active status, the applicant shall
14 provide evidence satisfactory to the board that the public liability, personal
15 injury and property damage insurance required by this section and any
16 workers' compensation required of the applicant under ORS 671.527 or
17 671.562 is in effect. During a license period, the licensee shall provide, to the
18 extent required by the board, satisfactory evidence of continued public li-
19 ability, personal injury and property damage insurance coverage and, if re-
20 quired under ORS 671.562, workers' compensation insurance coverage.

21 **“SECTION 9.** ORS 671.603 is amended to read:

22 “671.603. (1) A landscape construction professional or person operating
23 as a landscape contracting business shall notify the State Landscape Con-
24 tractors Board of a change of address for the professional or business that
25 occurs while the professional or business is licensed by the board or within
26 one year after a license expires. The landscape construction professional or
27 landscape contracting business shall ensure that the board receives notice
28 of the change of address no later than the [10th] **30th** day after the change
29 of address occurs.

30 “(2) Initial notice of a contested case or arbitration directed by the board

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

9 **“SECTION 10.** ORS 671.625 is amended to read:

10 “671.625. (1) The State Landscape Contractors Board shall by rule adopt
11 minimum standards for written contracts and billings of the landscape con-
12 tracting businesses. The standards shall set forth requirements for informa-
13 tion that must be contained in contracts and billings. The information
14 required shall be any information the board determines is necessary to pro-
15 vide protection for consumers of the services and materials provided by
16 landscape contracting businesses.

17 “(2) Work by a landscape contracting business subject to ORS 671.510 to
18 **671.760 for which the business charges \$2,000 or more for a landscape**
19 **job, as defined in board rule,** shall only be performed subject to a written
20 contract. Any contract or billing for such work must conform to the stan-
21 dards adopted under subsection (1) of this section.

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

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

26 “671.676. (1) The State Landscape Contractors Board shall adopt rules
27 establishing continuing education requirements for landscape construction
28 professionals. The board may not require landscape construction profes-
29 sionals to take more than [*10 hours of continuing education every year.*]:

30 **“(a) Sixteen hours of continuing education during a two-year period**

1 **if the landscape construction professional has six years or less of ex-**
2 **perience as an active licensee on the beginning date of the period; or**

3 **“(b) Eight hours of continuing education during a two-year period**
4 **if the landscape construction professional has more than six years of**
5 **experience as an active licensee on the beginning date of the period.**

6 “(2) The board may approve programs for purposes of continuing educa-
7 tion for landscape construction professionals and determine the number of
8 hours to be credited to the programs. The board shall ensure that continuing
9 education opportunities for landscape construction professionals are readily
10 available.

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

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

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

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

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

22 “(4) The board may adopt rules establishing grounds for obtaining a
23 waiver of the continuing education requirements for landscape construction
24 professionals. The board may not allow a waiver for [*more than two consec-*
25 *utive years*] **consecutive two-year periods** except for a waiver due to mili-
26 tary service, retirement, disability, absence from the state, inactive status
27 or extreme hardship.

28 **“SECTION 12.** ORS 671.690 is amended to read:

29 “671.690. (1) An applicant for a license as a landscape contracting busi-
30 ness shall file with the State Landscape Contractors Board a surety bond

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

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

6 “(b) \$10,000 for an applicant who, not in conjunction with the perform-
7 ance of landscaping work, constructs fences, decks, arbors, patios, landscape
8 edging, driveways, walkways or retaining walls, unless the applicant is made
9 subject to paragraph (d) **or (e)** of this subsection by work on other **land-**
10 **scape jobs, as defined by board rule**, performed by the applicant.

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

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

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

17 “(2) The bond or letter of credit shall be conditioned that the applicant
18 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
21 equipment to the landscape contracting business;

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

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

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

30 “(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 671.695 is amended to read:

29 “671.695. A claim against a licensed landscape contracting business is
30 payable from the bond, letter of credit or deposit required of the landscape

1 contracting business under ORS 671.690 only if the claim arises from the
2 performance, or a contract for the performance, of work that is subject to
3 ORS 671.510 to 671.760. The claim must be of one or more of the following
4 types:

5 “(1) A claim against the landscape contracting business by the property
6 owner or the owner’s agent for any of the following:

7 “(a) Negligent work.

8 “(b) Improper work.

9 “(c) Breach of **an oral or written** contract.

10 “(2) A claim against the landscape contracting business by the property
11 owner or the owner’s agent to discharge, or to recoup funds expended in
12 discharging, a lien established under ORS 87.010 to 87.060 or 87.075 to 87.093.
13 The State Landscape Contractors Board may reduce a claim described in this
14 subsection by any amount the claimant owes the landscape contracting
15 business. The board shall process claims described in this subsection only if:

16 “(a) The owner paid the landscape contracting business for work subject
17 to ORS 671.510 to 671.760; and

18 “(b) A lien established against the property of the owner under ORS
19 87.010 to 87.060 or 87.075 to 87.093 is filed because the landscape contracting
20 business failed to pay the person claiming the lien for that person’s contri-
21 bution toward completion of the improvement.

22 “(3) A claim against a licensed subcontractor by a licensed landscape
23 contracting business or by a construction contractor licensed under ORS
24 chapter 701, for any of the following:

25 “(a) Negligent work.

26 “(b) Improper work.

27 “(c) Breach of **an oral or written** contract.

28 “(4) A claim by a person furnishing labor to a landscape contracting
29 business.

30 “(5) A claim, as limited by rule of the board, by a person furnishing ma-

1 terial or renting or supplying equipment to the landscape contracting busi-
2 ness. The minimum limit set by the board may not be more than \$150.

3 “(6) A claim by a subcontractor against the landscape contracting busi-
4 ness for unpaid labor or materials arising out of a contract.

5 **“SECTION 14.** ORS 671.997 is amended to read:

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

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

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

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

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

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

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

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

29 “[*(e) Permanent revocation of the landscape contracting business’s license*
30 *for a fifth offense.]*

1 “(4)(a) If a landscape contracting business commits an act described
2 under ORS 671.610 (5), the board may assess civil penalties or impose
3 license sanctions under this subsection on the landscape contracting
4 business to which the contract is awarded, the landscape contracting
5 business that awards the contract, or both.

6 “(b) Notwithstanding subsection (1) of this section, a civil penalty
7 imposed on a landscape contracting business for a first offense of
8 committing an act described under ORS 671.610 (5) may not exceed
9 \$1,000.

10 “(c) In addition to any civil penalty assessed by the board, if a
11 landscape contracting business has two or more prior offenses for
12 committing acts described under ORS 671.610 (5), the board may im-
13 pose license sanctions on the landscape contracting business. The li-
14 cense sanctions:

15 “(A) For a third offense may not exceed the suspension of, or re-
16 fusal to reissue, a license for six months;

17 “(B) For a fourth offense may not exceed revocation of the license
18 for three years; or

19 “(C) For a fifth or subsequent offense may provide for permanent
20 revocation of the license.

21 “SECTION 15. (1) Section 2 of this 2015 Act applies to a contested
22 case proceeding for which a party delivers a request in writing to the
23 State Landscape Contractors Board on or after the effective date of
24 this 2015 Act.

25 “(2) The amendments to ORS 671.565 by section 8 of this 2015 Act
26 apply to applications for issuance, renewal or return of a license that
27 the board receives on or after the effective date of this 2015 Act.

28 “(3) The amendments to ORS 671.603 by section 9 of this 2015 Act
29 apply to changes of address occurring 10 days prior to the effective
30 date of this 2015 Act or later.

1 **“(4) The amendments to ORS 671.625 by section 10 of this 2015 Act**
2 **apply to work performed on or after the effective date of this 2015 Act.**

3 **“(5) The amendments to ORS 671.676 by section 11 of this 2015 Act**
4 **apply to continuing education requirements imposed for periods that**
5 **commence on or after the effective date of this 2015 Act.**

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

8 **“(a) Filed with a license application that the board receives on or**
9 **after the effective date of this 2015 Act; or**

10 **“(b) Filed as a replacement or additional bond on or after the ef-**
11 **fective date of this 2015 Act.**

12 **“(7) The amendments to ORS 671.997 by section 14 of this 2015 Act**
13 **apply to civil penalties or license sanctions that the board imposes on**
14 **or after the effective date of this 2015 Act for an offense committed**
15 **before, on or after the effective date of this 2015 Act.”.**

16
