



# CONSTRUCTION CONTRACTORS BULLETIN BOARD

HELPING TO PREVENT AND RESOLVE PROBLEMS IN THE CONSTRUCTION INDUSTRY

October 2005

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### Oregon Construction Contractors Board

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#### CCB Managers:

Administrator: Craig P. Smith, ext. 4010  
(Administrative Assistant: ext. 4077)

Education Manager/Public Information  
Officer: Gina Fox

Licensing Manager: Kristie Patton

Dispute Resolution Manager: Bill Boyd

Enforcement Manager: Richard Blank

Administrative Services Manager:  
Linda Teet

Information Technology Manager:  
Shelly Wiles

## Construction Claims Task Force Appointed

Nine Oregonians have been appointed to serve on a state task force that will study the relationship between construction liability claims and construction industry practices, construction defects, consumer protection, and state-mandated liability insurance requirements for contractors.

The nine members are:

- **Tom Skaar**, Portland, Pacific Western Homes, Inc., representing single-family dwelling contractors
- **Steven Malany**, Gresham, P & C Construction Company, representing commercial multi-family dwelling contractors
- **Laura Schauer**, Portland, O'Brien Constructors, LLC, representing commercial structure contractors
- **Bill Nesmith**, Salem, representing the Oregon Department of Energy
- **David DeHarrport**, Beaverton, Four D Construction, representing the state's Residential Structures Board
- **Jon Fahr**, Bend, Palmer Homes Inc., representing residential construction designers
- **Elsie Jones**, Portland, Jones Kendall Sauer, Inc., representing insurance agents

*Task Force continued on page 2*

## Available Soon: Independent Contractor Website

A new state-sponsored, multi-agency website for employers and independent contractors will be available in November.

The site will provide information regarding existing employment laws that affect contracting with independent contractors. It will also contain general information from agencies that deal with employers and workers, and will link to those agencies for more specific information.

Some of the questions the site will answer include:

What is an independent contractor?  
What are penalties for hiring an independent contractor who, under the law, qualifies as an employee? What agency do I contact if I have tax questions about independent contracting? The site address will be:

[www.oregonindependentcontractors.com](http://www.oregonindependentcontractors.com)

- **Jim Vavreck**, Portland, vice president for commercial underwriting, Liberty Northwest Insurance Corporation, representing insurers that offer contractor liability coverage
- **Eric Grasberger**, Portland, attorney, Stoel Rives, LLP, representing the public

The task force was mandated by House Bill 2078, which the 2005 Legislature approved in July. Rising construction liability claims, often attributed to new building products and contractor performance issues, have resulted in stiff premium increases for contractor liability insurance in recent years. Contractors complain that coverage is difficult to find and very expensive. Consumers complain that water damage, mold, and other problems require expensive repairs.

#### Construction Contractors Bulletin Board, Issue #62

This newsletter, an official publication of the Oregon Construction Contractors Board, gives Oregon contractors information on laws, policies and activities of the CCB and better business practices.

#### CCB mission:

*The CCB protects the public's interest relating to improvements to real property. The Board regulates construction contractors and promotes a competitive business environment through education, contractor licensing, dispute resolution and law enforcement.*

#### Board members:

\*Cliff Harkins, Canby  
 \*\*Walt Gamble, West Linn  
 Chuck Crump, Salem  
 Gwen Elster, Redmond  
 Jim Fairchild, Dallas  
 Dennis Schad, Coos Bay  
 Tom Skaar, Portland  
 Sandy Trainor, Sherwood  
 \*Chair, \*\*Vice-chair

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In compliance with the Americans with Disabilities Act, this publication is available in alternative formats by contacting the

For current information on the Construction Claims Task Force:  
<http://egov.oregon.gov/DCBS/CCTF/>

The task force's mission is to make recommendations to the 2007 Legislature to reduce the number of liability claims stemming from construction issues while assuring appropriate protection of Oregon consumers and affordable insurance for contractors. Recommendations could include changes to contractor education, quality control, and building code requirements.

The director of the Department of Consumer & Business Services (DCBS) appointed five task force members and the administrator of the Construction Contractors Board (CCB) appointed three. One member is a representative of the Department of Energy.

"The Construction Claims Task Force will bring together the expertise and

perspectives we need at the table to address these issues," said DCBS Director Cory Streisinger. "Both industry and consumers will benefit if this group can bring a strong, problem-solving focus to its work and establish a common understanding of the facts."

"The success of the task force is dependent upon its efforts to fully analyze and quantify the problems at hand," CCB Administrator Craig Smith said. "They must develop solutions that result in improving the quality of structures built in Oregon, while maintaining the lowest reasonable cost to consumers and ensuring a healthy business environment by maintaining a regulatory structure that supports and encourages small businesses."

DCBS is Oregon's largest regulatory agency. Among other areas, the department administers state laws and rules and protects consumers and workers in the areas of insurance regulation and building codes.

## Mercury Thermostats Annual Notification ORS 701.550

Effective January 1, 2006 it is against the law for any person to install a thermostat containing mercury in commercial or residential buildings. This rule does not prohibit the installation on thermostats containing mercury on industrial equipment used for safety controls. (ORS 455.355) (OAR 918-440-0510)

The 2001 Oregon Legislature passed The Oregon Mercury Reduction Act (HB3007) which phased out the use of mercury in certain consumer products for which there are readily available alternatives.

## Board Member News

**Cliff Harkins** was voted Chair of the Construction Contractors Board nine-member policy board at the August 23, 2005 meeting.

**Walt Gamble** was elected to serve another term as Vice Chair.

CCB Administrator, Craig P. Smith presented **Rich Tolvstad** with a myrtlewood plaque in appreciation for service to the people of Oregon while serving as a CCB Board member since 2000. Tolvstad completed his service at the August meeting.

CCB Board member **Tom Skaar** was tapped by Administrator Craig P. Smith to serve on the Construction Claims Task Force. The task force was mandated by HB 2078 approved by the 2005 Oregon Legislature.

## Highlights of 2005 Legislation

The 2005 Oregon Legislature adjourned on August 5, 2005 at 6:22 am. Unless otherwise indicated, these laws become effective January 1, 2006. Full text of the bills can be found on the web at [www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/) under the 2005 Regular Session.

*The following are summaries for Construction Contractors Board (CCB) sponsored legislation.*

### **HB 2071: Streamline Bond Payment Process (Large Commercial Claims):**

Requires that complaint or arbitration demand be filed with Construction Contractors Board and involving work on commercial structure, or on appurtenance to commercial structure, be accompanied by statement of claim. Requires the claimant to include a copy of the statement of claim when mailing the notice of claim to the surety.

### **HB 2072: Contested Case Hearing Housekeeping:**

Allows the Construction Contractors Board to adopt rules limiting ability to avoid contested case hearing. Allows the Board to adopt rules waiving the requirement for giving a notice of claim to contractor. Allows the Board to adopt rules waiving the claim processing fee for all claimants furnishing labor to contractors. Rearranges existing provisions of law.

### **HB 2075: Clarify CCB's Authority to Set Standards of Practice for Home Inspectors:**

Allows the Construction Contractors Board to adopt minimum standards of practice and professional conduct for certified home inspectors.

### **HB 2200: Streamline CCB Application, Education and Testing Requirements:**

A streamlining and rewrite of the agency's enabling statutes designed to enhance readability and organization of the Construction Contractors Board Act—Oregon Revised Statutes (ORS) 701. Increased agencies ability to hold individuals accountable for the acts of their construction businesses.

Clarifies the construction business owner or responsible employee requirement. Revises the training and testing requirements for construction business owners and responsible employees. Shortens the maximum term for construction contractor license. Strengthens the provision allowing Construction Contractors Board to suspend or refuse to issue license to construction business based on past activity of owners and others. Replaces the contractor license fees with application fees.

*The following is a highlight of additional legislation that affects CCB licensees:*

### **HB 2525: Winery Construction Standards and Availability of Residential Housing Features Designed to Assist Person with Disabilities:**

(Governor Signed August 17, 2005, Emergency Clause Effective Upon Signature)

Affects wineries and directs Construction Contractors Board to create a model list of features that may make residential housing more accessible to persons with disabilities. Allows the developer of residential

property, at their discretion, to utilize all or part of Board list to inform housing purchaser about accessibility features.

### **HB 2078: Creates Task Force on Construction Claims:**

(Governor Signed July 27, 2005, Emergency Clause Effective Upon Signature)

Creates a Task Force on Construction Claims. The task force will work in the interim to determine the size and scope of construction defects in structures built in Oregon in an effort to determine what changes could be made to contractor regulation, building codes, inspections and building materials authorized in Oregon, in an effort to reduce construction defects.

The task force is to study the relationship between construction claims and construction industry practices, construction defects, consumer protection and state-mandated requirements for contractors. Directs the task force to submit a report to Seventy-fourth Legislative Assembly no later than January 31, 2007.

### **HB 3017: Public Contract for Public Improvements:**

Clarifies the penalties that the CCB must impose in the event a contractor is found to have violated Oregon's public works prompt pay laws.

### **SB 323: Independent Contractor Law**

Provides a new definition of "independent contractor" designed to simplify the law and amplify the distinction between "employees" and

independent contractor. Redefines “independent contractor” for laws relating to income tax, unemployment insurance, and certain professions. Requires under the definition that an independent contractor be free from direction and control over the means and manner of providing services, that the person be engaged in an independently established business, and that the person be responsible for obtaining necessary licenses to provide the services. Specifies five criteria, three of which the person must meet in order to show that they have independently established a business: maintenance of a business location; bearing the risk of loss of the business; providing contracted service to two or more persons; significant investment in the business; and authority to hire other persons. Exempts farmers who provide services to other farms from the requirement to establish a separate business. Requires state agencies to cooperate as necessary in compliance and enforcement activities to ensure consistent interpretation and application of the definition. Specifies that “stringers” and correspondents or photographers for print or broadcast media who submit material by the piece or flat rate are not considered employees for purposes of unemployment insurance statutes and aligns definition of such professions to the current definition of an independent contractor.

**SB 385: Appraiser Discipline**  
(Governor Signed 6/20/05, Emergency Clause Effective upon signing)

Authorizes Appraiser Certification and Licensure Board to discipline state registered appraiser assistants. Reorganizes Board’s enforcement powers.

**SB 477: New Public Works – Worker Bond:**

Requires public works contractors to file public works surety bond with the Construction Contractors Board ensuring payment of claims relating to worker wages. Establishes claims process.

Requires public agency to retain a percentage of the amount earned by public works contractor until the contractor has filed the required certified payroll statements. Requires the contractor to retain a percentage of the amount earned by first-tier subcontractor until the subcontractor has filed the required certified payroll statements. Requires the contractor to verify that subcontractor has filed the required statements before paying subcontractor the amount retained. Requires the Commissioner of Bureau of Labor and Industries to compare state and federal prevailing wage rates and to determine which rate is higher for workers in each trade or occupation in each locality. Requires the Commissioner to make the information available. Requires public agencies to include prevailing wage rate specifications in public works contracts. Requires the contractor and subcontractors on public works project to pay state prevailing wage rates or federal prevailing wage rates, whichever are higher, when the project is subject to state and federal prevailing wage rate laws. Raises the threshold amount of contract price of projects subject to prevailing wage requirements. Revises method of determining price of project to exclude value of donated materials or work performed on project by individuals volunteering to public agency without pay.

**SB 574: Warranty Agreement:**

Authorizes contractor who builds new structure to present for recording a written warranty agreement between contractor and original owner to

facilitate handling of construction defects and express warranties.

**SB 1002: Reduces Threshold Contract Value:**

Reduces the requirement to commit a residential construction agreement to a written contract from \$2,500 to \$2,000.

**SB 1006: Document Lowest Responsible Bidder**

Requires public contracting agencies (state and local government) to document their determination of “lowest responsible bidder” on a form that must be submitted to the CCB and available for public inspection.

**NOTE:** Legislation that may affect construction contracting businesses may include other state agencies such as: Consumer and Business Services, Employment Department, Department of Revenue, Landscape Contractors Board and Department of Administrative Services.

For information on other legislation, contact the appropriate state agency or view their web page through the State of Oregon’s home page at:

[www.oregon.gov](http://www.oregon.gov).

**Not Passed:  
Tree Service Bill  
(HB 2097)**

The 2005 Legislature did not pass HB 2097. The CCB continues to license contractors engaged in removing trees, pruning trees, removing tree limbs or stumps or engaged in tree or limb guying as identified in ORS 701.005 (8) (d).

For more information contact the Landscape Contractors Board (LCB) at 503-986-6561 or the CCB at 503-378-4621.

## CCB Introduces “My License” and “e-Watch”

On August 29, 2005, the Construction Contractors Board (CCB) introduced two new on-line services aimed to help licensed contractors and reduce unlicensed activity. “My License” is a web-based computer application that lets contractors conduct business with the CCB on-line. After signing up for a CCB “My License” account, contractors can:

- Update their address, phone numbers, and email address in the CCB records.
- Obtain help in securing liability insurance (Contractor MAP)
- Check and monitor the status of their license as well as the status of the contractors working with them. (e-Watch)

CCB’s “e-Watch” is an automated system imbedded in “My License” that can let contractors monitor the status

of their subcontractors. Any time the CCB license status of a subcontractor listed on a general contractor’s “e-Watch” list changes, the general contractor will receive a status report automatically, via email, informing the general contractor of the change (including failure to have proof of proper liability insurance or bond). The purpose of the system is to help general contractors comply with the law and best business practices, and to only work with properly licensed bonded and insured subcontractors.

General contractors can also use CCB’s “e-Watch” to monitor their own license so they will be warned immediately in the event their license record needs attention.

There is no charge for CCB’s “My License” and “e-Watch” services. The

cost is included in a contractor’s CCB license fees, which were adjusted October 1, 2005 to \$260 for a two-year license period or \$520 for a four-year license.

In the future, licensees will be able to renew their licenses, pay fees, and transact other business using “My License”.

“My License” is open to all Oregon contractors who sign up by visiting the CCB’s website at [www.ccb.state.or.us\\_index.htm](http://www.ccb.state.or.us_index.htm).



## No Employees: Why an “If Any” Policy is a Good Idea

By David Waki, Small Business Ombudsman,  
Dept of Consumer & Business Services

*I was working on this house. I didn't really plan to have employees. This guy walked up. He looked down on his luck and asked for a few bucks. I told him if he picked up some of the debris and put it in the bin, I'd give him \$100 for the day. He worked really hard. A few hours later, I went to lunch. Before I left, I gave him \$100.00 cash and told him to finish up. I also told him not to go on the roof. I didn't expect him to be there when I got back, much less go up on the roof. He did, and he fell. At the hospital he told them he was working for me. To make matters worse, he told them I promised him \$200.00 and that I hadn't paid him yet.*

Did you know that there is a workers' compensation insurance available even

if you have no employees? It's also available if you have just an occasional hire! It's called the “**If Any**” policy. Maybe you heard of it and wondered what it was, or you were concerned that it would be too expensive, or hard to get.

An “If Any” policy is a workers' compensation insurance policy which is issued on an, “If Any”, basis. That means you, the purchaser, do not anticipate hiring any employees for the entire one-year policy term.

If you work for a general contractor that requires subcontractors to have a workers' compensation policy as part of the contractual agreement, an “If Any” policy will satisfy such a requirement. The “If Any” policy

protects you from claims brought against you by someone alleging to have been injured while working for you. In the event that you *do* hire an employee, the policy satisfies the requirement for a subject employer to have workers' compensation insurance, thus avoiding non-complying employer fines.

Note that an “If Any” policy does not cover you, the owner — it only covers employees you may hire.

### How much does an “If Any” policy cost?

The premise of an “If Any” policy is that you do not expect to hire any

— “If Any” Continued on page 6

### *“If Any” Continued from page 5*

employees and that you will not have payroll to meet; therefore, the premium charged is not based upon any exposure. A minimum premium of \$534 is the up-front cost of the policy. This amount represents the sum of a \$320 minimum premium plus \$180 expense constant, and a tax of \$34. “If Any” policies are issued on an annual basis. At the end of the policy term, you will receive a payroll report on which to document your payroll for the policy year. If you had no payroll for the year, write “no employees” on the report and send it back to the insurance carrier; upon receipt of the payroll report, the insurance carrier will credit back \$303.32, which is the sum of a lower minimum premium plus the expense constant. This transaction takes on average 45 days to process. Your out-of-pocket net cost for the “If Any” policy is \$230.68.

If you have any employees during the subject policy term, your cost is higher and varies depending on payroll and type of work your employees do during the policy term.

If you don’t submit a payroll report to the insurance carrier, you are not likely to receive any premium credit.

## Put It in Writing

Bill Boyd, Construction Contractors Board (CCB) Dispute Resolution Manager says “Oral construction agreements lead to hundreds of unnecessary claims at the CCB”.

SB 1002, effective January 1, 2006, requires all construction agreements to be committed to a written contract if the contract price exceeds \$2,000.

The CCB recommends using a written contract on all jobs. Using written

### So how do you get an “If Any” policy?

The “If Any” policy can only be purchased through the **assigned risk pool** (the “Oregon Workers’ Compensation Insurance Plan”). The first step is to dial this toll free number, (800) 622-4123. When prompted, enter extension # 1912. When you get to an attendant, identify yourself as an **Oregon employer**. This tells the attendant that you cannot be charged for this service. You may ask the attendant to take your application over the phone, and he or she will do so at your request. **You cannot be charged additional fees for this service and you do not have to request the coverage through an agent.** If there is any confusion regarding the “If Any” policy, ask for the **supervisor of the Oregon Unit**, who will assist you in obtaining coverage.

After your application is completed, an electronic transfer from your bank account will get your coverage in force earlier. This means that you could call this afternoon, complete your application over the phone, request an electronic transfer, and your coverage could be in force as early as 12:01 a.m. tomorrow.

contracts prevents misunderstandings and construction disputes. Contractors that commit all contracts exceeding \$2,000 to writing will not only avoid problems with their customers, they will avoid CCB civil penalties a that can be as high as \$1,000 per contract for repeat offenses.

Although oral agreements can be enforced by CCB and the courts, parties to construction disputes often dispute the

### Worker Compensation Investigations

Approximately 25% of investigations involve contractors. Of those, 83% are non-complying employers.

Penalties are assessed at two times the amount of what the premium coverage would have been.

Ongoing or subsequent violations are assessed a premium at \$250 per day with no limit on the penalty to be assessed for noncompliance.

You can see that securing an “If Any” policy has advantages for protecting your business and satisfying contractual provisions. It’s easy to apply for and relatively inexpensive.

If you have questions about this article or other questions related to workers’ compensation insurance, please contact the Small Business Ombudsman for Workers’ Compensation, (503) 378-4209. Our office was established to serve Oregon businesses as a workers’ compensation insurance advocate and educator.

*Editor’s note: The CCB requires your CCB license class to be on record as nonexempt if you hire an employee(s).*

terms of the oral contract. “Why take that chance,” asks Boyd?



## Oregon changes the definition of “independent contractor”

By Jim Brunson, Employment Division

Beginning January 1, 2006, Oregon’s newly revised independent contractor law will become effective.

Oregon Revised Statute 670.600, defines independent contractor for various state agencies. The old law, which remains in effect through December 31, 2005, contains multiple requirements to be met in order for a person providing services for pay to be properly classified as an independent contractor.

The 2005 Oregon Legislature, responding to the business community’s call for an easier to understand and more broadly applied law, overhauled the portion of the statute that defines whether a service provider is operating an “independently established business”. Some parts of the old law remain, but several requirements have been either removed or reduced in their impact.

The new law considers service providers to be independent contractors if they:

- Are free from direction and control, subject to the right of the service recipient to specify the desired result.
- Are Licensed under ORS 671 or 701 (CCB, State Landscape Architect Board or Landscape Contractors Board and State Board of Architect Examiners) if required for the service.
- Are responsible for other licenses or certificates necessary to provide the service.
- Are customarily engaged in an independently established business ( if they meet 3 out of the 5 below):

1. Maintain a business location that is

a. Separate from the business or work location of the service recipient; or

b. that is in a portion of their own residence that is used primarily for business.

2. Bear the risk of loss, shown by factors such as:

a. Entering into fixed price contracts;

b. Being required to correct defective work;

c. Warranting the services provided; or

d. Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.

3. Provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

4. Make a significant investment in the business through means such as:

a. Purchasing tools or equipment necessary to provide the services;

b. Paying for the premises or facilities where the services are provided; or

c. Paying for licenses, certificates or specialized training required to provide the services.

5. Have the authority to hire and fire other persons to provide assistance in performing the services.

- A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C isn’t required to meet the independently established business requirements.
- Establishing a business entity such as a corporation or limited liability company, doesn’t, by itself, establish that the individual providing services will be considered an independent contractor.

Requirements in the old law that have been removed are:

- The service provider must have filed federal and state tax returns in the name of the business or farm in the previous year if operated as an independent contractor in the previous year.
- Payment for labor or services is based completion of a specific portion of the project or on an annual or periodic retainer.
- The service provider uses a telephone listing and service for the business that is separate from the personal residence listing and service.

**The actual text of the new statute can be found in Senate Bill 323 at the Oregon State Legislature Page [www.leg.state.or.us](http://www.leg.state.or.us) - search for Senate Bill 323 pdf or html.**

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## New Contractor Licensing Fee

Effective October 1, 2005, the fee for a construction contractor license will be adjusted from \$295 to \$260 for a two-year license or \$590 to \$520 for a four-year license.

This change is effective for new licenses and the renewal of licenses after October 1, 2005.

The adjustment was approved by the Construction Contractors' nine-member policy Board at the August 23, 2005 meeting.

## What's the buzz?

### News you can use from the CCBee



*"My License" is a new service available from the CCB*

"My License" is a web-based application that lets licensed contractors conduct certain business actions with the CCB on-line. After signing up for a "My License" account, you will be able to:

- Update your address, phone numbers and email address in the CCB records.
- Obtain help in securing liability insurance (Contractor MAP)
- Check and monitor the status of your license as well as the status of the contractors working with you. (e-Watch)

"e-Watch" is an automated system that lets you monitor the status of other licensed contractors (such as subcontractors). Any time the license status of one of the contractors on your e-Watch list changes, you will receive a status report automatically, via email, informing you of the change (including failure to have proof of proper liability insurance or bond).

You can also use e-Watch to monitor your own license so you will be warned immediately in the event your license record needs attention.

Sign up for "My License" at [www.ccb.state.or.us](http://www.ccb.state.or.us). (See story on page5.)