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ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 808
LANDSCAPE CONTRACTORS BOARD

FILED
09/28/2018 2:06 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Allows this agency to accept claims that are filed in court

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Kim Gladwill-Rowley 22111 Front St
503-967-6291, Ext. 223 Salem, OR 97301
kim.gladwill@oregon.gov

Filed By:
Kim Gladwill-Rowley
Rules Coordinator

NEED FOR THE RULE(S):

The current rules and statutes allow this agency to accept claims that are also filed in court only if the claim was first filed with this agency. This change allows this agency to accept claims already filed in court as long as they meet other jurisdictional requirements. Current rules also say if a claim is filed in court after being filed with this agency, this agency will suspend processing the claim until the court makes a determination and if the court issues an award that the contracting business pay the claimant, this claim is closed and it is considered a landscaping debt. The claim process is to provide access to the bond. This cleans up the process for claims filed in court to more accurately reflect the statutes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 671 & OAR 808 are available on the LCB website at www.oregon.gov/lcb

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no affect to other agencies or small businesses and no other requirements for the Board.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Several Board members are small business owners

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Board acts as its own Rule Advisory Committee

RULES PROPOSED:

808-004-0510, 808-004-0520

AMEND: 808-004-0510

RULE SUMMARY: Allows this agency to accept a claim that has been filed in court on the same issues.

CHANGES TO RULE:

808-004-0510

Court Judgments and Other Authorized Entity Determinations ¶

(1) As used in this rule "a court judgment, arbitration award or other entity determination" means a judgment, award or determination by a court, arbitrator or other entity, as that phrase is defined in Division 2 of these rules. ¶

~~(2) The agency will not accept a claim based on a court judgment, arbitration award or other entity determination, but such determination may constitute a landscaping contracting business debt under ORS 671.607, and be the basis for suspension of a license issued by the board is chapter. ¶~~

~~(3) The agency may accept a claim based on facts and issues within the jurisdiction of the agency not previously determined by a court, arbitrator or other entity, even if those facts and issues are related to landscape contracting work that was subject to a determination previously made by a court, arbitrator or other entity. The filing of the claim must meet the requirement of ORS 671.700(3).~~

Statutory/Other Authority: ORS 183.325 - 183.410, 670.310, 671.670

Statutes/Other Implemented: ORS 671.703

AMEND: 808-004-0520

RULE SUMMARY: Allows this agency to accept and continue to process claims that are filed in court

CHANGES TO RULE:

808-004-0520

Processing of Claim Submitted to Court, Arbitrator or Other Entity ¶

(1) "Court, arbitrator or other entity" has the meaning given that phrase in ~~Division 2~~ of this chapter. ¶

(2) The agency may suspend processing a claim if: ¶

(a) Either party transfers a claim to a court, arbitrator or other entity, to address the same facts and issues contained in the statement of claim filed against ~~Respondent~~, including but not limited to suits based on breach of contract, negligence or incompetence, damages, a complaint for declaratory judgment, another complaint that arises from the contract or work that is the subject of the claim, and suits to foreclose a lien involving the same contract at issue in the claim; or ¶

(b) The agency requires the claimant to submit the claim to a court of competent jurisdiction because the agency determined that a court is the appropriate forum for the adjudication of the claim due to the nature or complexity of the claim. ¶

(3) If the agency suspends processing a claim under subsection (2) of this rule, the agency shall notify the claimant on the date it suspends processing the claim that processing has been suspended. ¶

(4) Within 30 days of the date of final action by the court, arbitrator or other entity, the claimant shall deliver to the agency a certified copy of the final judgment; a copy of the arbitration award, or a copy of the decision by another entity, as well as copy of the complaint or other pleadings on which the judgment, award or decision was based. ¶

(5) The agency shall accept a final judgment, award or decision of the court, arbitrator or other entity as stated in subsection (4) of this rule as the final determination of the merits of the claim, with respect to any and all issues from the claim addressed by the final judgment, award or decision. If it if: ¶

(a) The final judgment, award or decision includes a requirement for the court, arbitrator or other entity clearly mirrors the Respondent to pay the claimant, such award, judgment or decisions qualifies as a landscaping debt. If all issues of the claim are addressed by the final judgment, award or decision, the claim shall be close claim filed with the agency; or ¶

(b) does not clearly mirror the claim filed with the agency, but the awarded amounts have been divided into identifying amounts and their relationship to the claim items. ¶

(6) If the claim meets all requirements of ORS s671.695 to ORS 671.703 and OAR 808, Division 004, and a final judgment, award or decision includes a requirement for the Respondent to pay the Claimant, such award, judgment or decisions qualifies as a clam against the bond. ¶

(57) If any issues from the claim are not addressed by the final judgment, award, or decision, the agency may resume processing the claim, with respect to those issues from the claim that are not addressed by the final judgment, award, or decision.

Statutory/Other Authority: ORS 183, 670.310, 671.670

Statutes/Other Implemented: ORS 183.415, 183.460, 671.703, 671.575