

2011 OREGON REVISED STATUTES

Landscape Contractors Board

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Chapter 671

LANDSCAPE CONSTRUCTION
PROFESSIONALS AND LANDSCAPE
CONTRACTING BUSINESSES

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**CHAPTER 671:
LANDSCAPE CONSTRUCTION
PROFESSIONALS AND LANDSCAPE
CONTRACTING BUSINESSES**

(Generally)

671.510 Short title. ORS 671.510 to 671.760 may be cited as the Landscape Contractors Law. [1971 c.764 §1; 1973 c.832 §25]

671.520 Definitions for ORS 671.510 to 671.760.

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

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

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

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

(c) Construct or repair ornamental water features, drainage systems or irrigation systems;

(d) Maintain irrigation systems with the use of compressed air; or

(e) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

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

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

(4) "Nursery stock" means nursery stock:

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

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

(5) "Ornamental water features" means fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions as identified by the board by rule. [1971 c.764 §2; 1973 c.832 §26; 1975 c.757 §1; 1981 c.536 §22; 1983 c.452 §1; 1985 c.565 §91; 1987 c.414 §45; 1997 c.785 §1; 1999 c.32 §1; 2001 c.48 §1; 2005 c.609 §10; 2007 c.541 §11; 2009 c.483 §1]

(Licensure)

671.525 Applicant for landscape contracting business license required to be independent contractor; classes of licensees.

(1) An applicant for a landscape contracting business license must qualify as an independent contractor, under ORS 670.600, to be licensed with the State Landscape Contractors Board.

(2) The board shall establish two classes of independent contractor licensees:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations and limited liability companies with one or more employees; and

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members if any of the partners, officers or members are not part of the same family and related as parents, spouses, siblings, children, grandchildren, sons-in-law or daughters-in-law.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt.

(3) All partnerships, corporations and limited liability companies applying for a landscape contracting business license must have a federal tax identification number.

(4) If a licensee who qualifies under subsection (2)(b) of this section hires one or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section, the licensee is subject to penalties under ORS 671.997 and must submit proof that the licensee qualifies under subsection (2)(a) of this section.

(5) The decision of the board that a licensee is an independent contractor applies only when the licensee is performing work of the nature described in ORS 671.520 and 671.530. [1991 c.533 §6; 1997 c.337 §2; 2007 c.541 §12]

671.527 Applicant for landscape contracting business license workers' compensation coverage.

(1) An applicant for a landscape contracting business license that qualifies under ORS 671.525 to be classified as a nonexempt independent contractor must provide workers' compensation insurance coverage for all employees of the landscape contracting business.

(2) An applicant for a landscape contracting business license that qualifies under ORS 671.525 to be classified as an exempt independent contractor, and that has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscaping business, must verify that all leasing company or service provider employees supplied for use by the business are covered

by workers' compensation insurance. As used in this subsection, "worker leasing company" and "temporary service provider" have the meanings given those terms under ORS 656.850. [2011 c.283 §2]

Note: Section 6, chapter 283, Oregon Laws 2011, provides:

Sec. 6. Section 2 of this 2011 Act [671.527] applies to license applications filed with the State Landscape Contractors Board on or after the effective date of this 2011 Act [January 1, 2012]. However, section 2 of this 2011 Act does not require a worker leasing company or temporary service provider to alter any rights or duties of the leasing company or service provider under a contract entered into before the effective date of this 2011 Act. [2011 c.283 §6]

671.530 Licensing requirements; use of title; scope of landscape construction professional license.

(1) A person may not operate as a landscape construction professional in this state without a valid landscape construction professional license issued pursuant to ORS 671.560.

(2) A person may not represent in any manner that the person is a landscape construction professional unless the person has a valid landscape construction professional license issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is not limited to:

(a) Using the title of landscape contractor, landscape construction professional, landscape gardener or landscaper or any other title using a form of the word "landscape" that indicates or tends to indicate that the person is a landscape construction professional; and

(b) Using any sign, card or device that indicates or tends to indicate that the person is a landscape construction professional.

(3) A person may not operate as a landscape contracting business in this state unless the person has a valid landscape contracting business license issued pursuant to ORS 671.560.

(4) A person may not advertise or represent in any manner that the person is a landscape contracting business unless the person has a valid landscape contracting business license issued pursuant to ORS 671.560. The prohibition in this subsection includes, but is not limited to:

(a) Using the title of landscape business, landscaping business or landscape contracting business; and

(b) Using any title, sign, card or device that indicates or tends to indicate that the person is a landscape contracting business.

(5) A landscape maintenance business may use a

form of the word "landscape" in the title of the business only if the title clearly indicates the maintenance nature of the business. For purposes of this subsection, the term "landscape gardening" does not indicate the maintenance nature of a landscape maintenance business.

(6) A landscape construction professional may perform landscaping work only while in the employ of a landscape contracting business licensed and bonded as required by ORS 671.510 to 671.760. If the landscape construction professional is the sole proprietor, the landscape construction professional must also obtain a license as a landscape contracting business. [1971 c.764 §3; 1973 c.832 §27; 1975 c.757 §2; 1979 c.840 §1a; 1983 c.452 §2; 1989 c.944 §1; 2003 c.659 §1; 2007 c.541 §13]

671.540 Application of ORS 671.510 to 671.760.

(1) Except as provided in subsection (2) of this section, ORS 671.510 to 671.760 and 671.990 (2) do not apply to:

(a) Any federal or state agency or any political subdivision performing landscaping work on public property.

(b) Any landscape architect registered under ORS 671.310 to 671.459 and practicing as provided under ORS 671.310 to 671.459.

(c) Landscaping work performed by a landscape maintenance business if:

(A) The landscaping work is performed for a customer that in a calendar year receives primarily landscape maintenance services from the business;

(B) The value of all labor, materials or other items supplied for landscaping work at a job site does not exceed \$500 in a calendar year; and

(C) The landscaping work is of a casual, minor or inconsequential nature, as those terms are defined by the State Landscape Contractors Board by rule.

(d) Installation of fences, decks, arbors, driveways, walkways or retaining walls if performed by a person or business licensed with the Construction Contractors Board.

(e) Rough grading of plots and areas of land performed in conjunction with new or remodeling construction if performed by a person or business licensed with the Construction Contractors Board.

(f) Any owner of property, or employee of an owner of property, who contracts for landscaping work on the property to be performed by a person licensed under ORS 671.560. The exception provided by this paragraph does not apply to a person who, in pursuit of an independent business, performs or contracts for the performance of landscaping work with the intent of offering for sale before, upon or after completion of the landscaping work the property upon which the

landscaping work is performed.

(g) Any landscaping work performed by a person on property that the person owns or in which the person has a legal interest. The exception provided by this paragraph does not apply to a person who, in pursuit of an independent business, performs or contracts for the performance of landscaping work with the intent of offering for sale before, upon or after completion of the landscaping work the property on which the landscaping work is performed.

(h) A residential general contractor licensed under ORS chapter 701 who performs landscaping work if the total value of the landscaping is less than \$2,500 per residential dwelling and the landscaping work is performed on residential property for which the contractor is under contract for the construction of a new dwelling. The exception provided by this paragraph does not apply to the performance of irrigation work by a residential general contractor. The State Landscape Contractors Board shall revise the amount specified in this paragraph every five years, beginning in 2003, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor.

(i) A residential general contractor licensed under ORS chapter 701 who performs landscaping work on residential property that is directly related to local building code requirements or occupancy ordinances including, but not limited to, the placement of street trees. The exception provided by this paragraph does not apply to the performance of irrigation work by a residential general contractor.

(j) A person engaged in making plans or drawings for the selection, placement or use of plants or other site features, unless the plans or drawings are for the purpose of providing construction details and specifications.

(k) Use by a person other than a landscape construction professional of the title "landscape designer" when engaged in making plans or drawings described in paragraph (j) of this subsection.

(L) A person providing recommendations or written specifications for soil amendments or planting media if the recommendations or specifications are solely for the purpose of plant installation.

(m) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in supervising installation work on piping for an irrigation system designed by a landscape contracting business or by a person registered under ORS 671.310 to 671.459.

(n) A plumbing contractor licensed under ORS 447.010 to 447.156 when engaged in supervising repair or maintenance work on piping for an irrigation

system.

(o) A journeyman plumber licensed under ORS chapter 693 when performing an installation for a plumbing contractor described in paragraph (m) of this subsection or performing repair or maintenance work on piping for an irrigation system.

(p) An employee, as defined in ORS 657.015, of a residential general contractor licensed under ORS chapter 701 when performing work that the contractor may perform under paragraph (h) or (i) of this subsection.

(q) An employee of a licensed landscape contracting business when performing work for the business under the direct supervision of a licensed landscape construction professional.

(r) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed landscape contracting business under the direct supervision of a licensed landscape construction professional.

(2) ORS 671.530 (2), (4) and (5) apply to a person described under subsection (1) of this section. [1971 c.764 §4; 1973 c.832 §28; 1979 c.840 §2; 1981 c.536 §17; 1983 c.452 §3; 1997 c.785 §2; 1999 c.32 §2; 1999 c.402 §10; 2001 c.49 §1; 2001 c.660 §54; 2003 c.14 §424; 2003 c.659 §2; 2005 c.609 §11; 2007 c.541 §14; 2007 c.836 §50; 2009 c.483 §§2,3]

671.550 Authority of board to investigate; confidentiality of information. (1) The State Landscape Contractors Board may inquire into and inspect:

(a) Any services performed or materials furnished by a licensee under ORS 671.510 to 671.760.

(b) The financial records of a person who it reasonably believes is operating in violation of ORS 671.530.

(c) The services performed or materials furnished by a person who it reasonably believes is operating in violation of ORS 671.530.

(2) Except when used for legal action or to determine a claim described in ORS 671.695, the information obtained by an inspection authorized by this section is confidential. However, the board shall furnish copies of any inspection to the licensee or other person that is subjected to an inspection. [1971 c.764 §5; 1979 c.840 §3; 1983 c.452 §4; 2001 c.198 §1; 2007 c.149 §3]

671.555 Investigation of person engaged in landscape contracting business; procedures; orders to stop work. (1) The State Landscape Contractors Board may investigate the activities of any person engaged in the landscape contracting business to determine compliance with ORS 671.510 to 671.760.

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

(3) Any inspector or investigator authorized by the board to determine compliance with ORS 671.510 to 671.760 may require any person who is engaged in any activity regulated by ORS 671.510 to 671.760 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.760. If a person who is contracting directly with the owner of the property does not demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or investigator may give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of ORS 671.510 to 671.760 and shall provide that unless the person demonstrates proof of compliance within two days of the date of the notice, the inspector or investigator may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each property upon which the person is then performing work under contract. If more than one person is the owner of any such property, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the two-day period specified in the notice to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.760, the inspector or investigator may order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector or investigator may not order the work stopped until at least two days after the copies of the notice of noncompliance have been served upon or delivered to the owners.

(4) Notwithstanding subsection (3) of this section, the board may order landscaping work stopped immediately if the landscape contracting business working on a worksite cannot demonstrate that the business has been licensed by the board at any time within the two years immediately preceding work on the worksite.

(5) The board has the power to administer oaths, issue notices and subpoenas in the name of the board,

compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to 671.760.

(6) If any person fails to comply with a subpoena issued under subsection (5) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440. [1991 c.533 §5; 1999 c.33 §1; 2007 c.399 §2; 2007 c.541 §15a]

671.557 Injunctive relief. In addition to any other remedy available, if the State Landscape Contractors Board believes that a person has engaged in, is engaging in or is about to engage in any act, practice or transaction that violates ORS 671.510 to 671.760, the board may direct the Attorney General to apply to the court for an injunction to restrain the person from engaging in the act, practice or transaction. [2005 c.609 §5]

671.560 Issuance of license; application form; limited or specialty license; rules; exemption. (1) Except as provided in ORS 671.571 and 671.590, the State Landscape Contractors Board shall issue a landscape construction professional license to an applicant who satisfies the requirements of ORS 671.570.

(2) The board shall issue a landscape contracting business license to an applicant who satisfies the requirements of the board.

(3) An applicant for a license under this section shall apply to the board upon a form furnished by the board and give such information as the board considers necessary.

(4)(a) The board may issue a limited or specialty license if the applicant is required to have a landscape construction professional license or landscape contracting business license but is not qualified or required to be licensed for all phases of landscape work.

(b) The board may adopt rules to limit or restrict the landscape work performed by probationary landscape construction professionals.

(5) A landscape contracting business that qualifies for the exemption described in ORS 571.045 shall indicate on its license application or license renewal application under this section the reasons the business qualifies for the exemption. [1971 c.764 §6; 1975 c.757 §4; 1983 c.452 §5; 1999 c.535 §4; 2007 c.111 §3; 2007 c.541 §16a]

671.562 Landscape contracting business workers' compensation coverage. (1) A landscape contracting business that qualifies under ORS 671.525 to be classified as a nonexempt independent contractor must maintain workers' compensation insurance coverage in effect for all employees of the landscape contracting business.

(2) A landscape contracting business licensee that qualifies under ORS 671.525 to be classified as an exempt independent contractor, and that has entered into a contract with a worker leasing company or temporary service provider for the supplying of workers to the landscaping business, must verify that workers' compensation insurance coverage is maintained in effect for all leasing company or service provider employees supplied for use by the business. As used in this subsection, "worker leasing company" and "temporary service provider" have the meanings given those terms under ORS 656.850. [2011 c.283 §3]

Note: Section 7, chapter 283, Oregon Laws 2011, provides:

Sec. 7. Section 3 of this 2011 Act [671.562] applies to a landscape contracting business that uses worker leasing company or temporary service provider employees on or after the effective date of this 2011 Act [January 1, 2012] under a contract entered into before, on or after the effective date of this 2011 Act. However, section 3 of this 2011 Act does not require a worker leasing company or temporary service provider to alter any rights or duties of the leasing company or service provider under a contract entered into before the effective date of this 2011 Act. [2011 c.283 §7]

671.563 Applicant notice of unpaid judgments, awards and orders; rules. An applicant for the issuance or renewal of a landscape construction professional license or landscape contracting business license shall include in the application to the State Landscape Contractors Board notice of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any jurisdiction that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work. The board may adopt rules that require an applicant to provide additional information regarding a judgment, arbitration award or agency final order described in this section and the status of any appeal or exceptions. [2007 c.151 §2; 2007 c.541 §28a]

671.565 Landscape contracting business license application process and information requirements.

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

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

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

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

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

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

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

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

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

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

by the board, satisfactory evidence of continued public liability, personal injury and property damage insurance coverage and, if required under ORS 671.562, workers' compensation insurance coverage. [1983 c.452 §8; 1991 c.533 §1; 2005 c.609 §12; 2007 c.399 §3; 2007 c.541 §17a; 2011 c.283 §4]

671.568 Inactive status for landscape contracting business license. (1) If a licensed landscape contracting business is not operating as a landscape contracting business, the State Landscape Contractors Board may, upon request, place the license of the landscape contracting business in inactive status.

(2) A landscape contracting business in inactive status remains subject to board jurisdiction and is required to comply with the requirements for a landscape contracting business other than the security requirement under ORS 671.690 and the insurance requirements under ORS 671.565.

(3) A landscape contracting business that is in inactive status may not:

(a) Perform work as a landscape contracting business;

(b) Offer or provide for the performance of landscaping work as a landscape contracting business; or

(c) Obtain a building permit for work involving landscaping work by the landscape contracting business.

(4) A landscape contracting business license may not be placed or maintained in inactive status more than once during a licensing period. [2005 c.609 §2; 2007 c.541 §18]

671.570 Qualifications for landscape construction professional license; fee; rules. (1) Each person applying for a landscape construction professional license must:

(a) Pay a nonrefundable application fee.

(b) Pay an examination fee.

(c) Pay to the State Landscape Contractors Board the landscape construction professional license fee required by ORS 671.650.

(d) Pass an examination, which the board shall offer at least once each six months, to determine the fitness of the applicant for licensing and within 10 years before the day the application for a license is made:

(A) Have at least 24 months of employment with a landscape contracting business; or

(B) Have at least 12 months of employment with a landscape contracting business and one full year of training in an area related to landscaping at an accredited school or college.

(e) Be employed by, or own, a landscape

contracting business if performing landscaping work.

(2) Notwithstanding subsection (1) of this section, the board may adopt rules allowing a person who does not meet the education and experience requirements in subsection (1)(d) of this section to substitute other education and experience that demonstrate the fitness of the person for licensing as a landscape construction professional. [1971 c.764 §7; 1973 c.832 §29; 1975 c.757 §5; 1979 c.840 §4; 1983 c.452 §6; 1985 c.565 §92; 1987 c.414 §45a; 1997 c.327 §1; 2001 c.409 §5; 2007 c.111 §4; 2007 c.399 §6; 2007 c.541 §19b]

671.571 Probationary license. (1) Notwithstanding ORS 671.570, the State Landscape Contractors Board may issue a probationary landscape construction professional license to a person who does not meet the training and experience qualifications set forth in ORS 671.570. To obtain a probationary landscape construction professional license, the person must:

(a) Pay a nonrefundable application fee;

(b) Pay an examination fee;

(c) Pay to the board the landscape construction professional license fee required by ORS 671.650; and

(d) Pass all sections of the examination described in ORS 671.570 within 12 months after first taking the examination.

(2) Two or more years after receiving a probationary landscape construction professional license, a probationary landscape construction professional may obtain removal from probationary status and issuance of a landscape construction professional license if the probationary landscape construction professional presents the board with proof that the probationary landscape construction professional has done any of the following:

(a) Completed at least 24 months of employment with a licensed landscape contracting business under the direct supervision of a landscape construction professional.

(b) Provided supervision described in ORS 671.540 (1)(q) or 671.565 (1)(b) for at least 24 months as the owner or employee of a licensed landscape contracting business that, during that period:

(A) Filed and maintained with the board a bond, letter of credit or deposit in the amount of \$15,000; and

(B) Performed landscaping work only on landscaping projects where the amount charged by the landscape contracting business for work on the project during any 12-month period did not exceed \$15,000.

(c) Actively operated for at least 24 months as a construction contractor licensed under ORS chapter 701.

(3) Except as provided in this section and ORS 671.560 and as the board may provide by rule, a

probationary landscape construction professional licensed under this section is for all purposes a landscape construction professional licensed under ORS 671.560. [2007 c.111 §2; 2007 c.399 §5; 2007 c.541 §19d; 2009 c.483 §4]

671.572 Alternative licensing standards for person licensed as construction contractor.

Notwithstanding the provisions of ORS 671.570 regarding experience and employment status, the State Landscape Contractors Board may adopt alternative standards for licensure with the board for a person who is already licensed as a contractor under ORS chapter 701. [1997 c.785 §5; 1999 c.402 §11]

671.574 Inactive status for landscape construction professional license. (1) If a landscape construction professional is not operating as a landscape construction professional, the State Landscape Contractors Board may, upon request, place the license of the landscape construction professional in inactive status.

(2) A landscape construction professional in inactive status remains subject to board jurisdiction, licensing requirements and fees.

(3) A landscape construction professional that is in inactive status may not perform or supervise work as a landscape construction professional.

(4) A landscape construction professional license may not be placed or maintained in inactive status more than once during a licensing period. [2005 c.609 §3; 2007 c.541 §20]

671.575 License required to obtain judicial or administrative remedy; exception. (1) A landscape contracting business may not file a lien, file a claim with the State Landscape Contractors Board or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract for work that is subject to ORS 671.510 to 671.760 and 671.997, unless the landscape contracting business was:

(a) Licensed under ORS 671.510 to 671.760 at the time the landscape contracting business bid or entered into the contract for performance of the work; and

(b) Licensed continuously while performing the work for which compensation is sought.

(2) If the court determines that the landscape contracting business was not aware of the requirement that the business be licensed, a court may choose not to apply subsection (1) of this section if the court finds that to do so would result in a substantial injustice to the unlicensed landscape contracting business.

(3) If a landscape contracting business falsely swears to information provided under ORS 671.560 or

671.565 or knowingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565, the landscape contracting business may not file a lien, file a claim with the State Landscape Contractors Board or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract for work that is subject to ORS 671.510 to 671.760 and 671.997. [1991 c.533 §7; 2007 c.541 §21]

671.578 Suit for damages for misrepresentation; attorney fees. If any person suffered costs or damages as a result of an individual providing a false or invalid State Landscape Contractors Board number or otherwise misleading a person with respect to licensing with the board, that person may bring suit in a court of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1991 c.533 §8; 1995 c.618 §119]

671.580 Landscape construction professional license not transferable. A landscape construction professional license issued pursuant to ORS 671.560 is a personal privilege and is not transferable. [1971 c.764 §8; 1983 c.452 §9; 2007 c.541 §22]

671.590 Reciprocal landscape construction professional licensing. The State Landscape Contractors Board may license without examination any person who is a landscape construction professional licensed, certified or registered under the laws of another state, territory of the United States, the District of Columbia or another country where the requirements on the date the applicant was licensed, certified or registered were substantially equal to the requirements for licensing of landscape construction professionals in this state on the date of application by the person. [1971 c.764 §9; 1973 c.832 §30; 1975 c.757 §6; 1979 c.840 §5; 1983 c.452 §10; 2007 c.541 §23]

671.595 Coursework and examination requirements for noncontractor owners and managing employees; notice of duty changes; rules.

(1) As used in this section:

(a) “Managing employee” means a person who, at the time of an application for the issuance or renewal of a landscape contracting business license:

(A) Is employed in landscaping work only by the applicant; and

(B) Manages or shares in the management of the applicant, as defined by the State Landscape Contractors Board by rule.

(b) “Owner” means a person who at the time of an

application for the issuance or renewal of a landscape contracting business license:

(A) Has an ownership interest in the applicant; and

(B) Manages or shares in the management of the applicant, as defined by the board by rule.

(2) If an applicant for a landscape contracting business license does not have at least one owner or managing employee who is licensed as a landscape construction professional under ORS 671.560, the applicant shall provide the board with proof that an owner or managing employee has completed required courses described in subsection (4) of this section and passed an examination on the subject of those courses.

(3) The board may adopt rules to require a landscape contracting business and any owner or managing employee to provide the board with notice of any change in the employment or duties of the owner or managing employee.

(4) The board shall adopt rules establishing required courses for an owner or managing employee who seeks to qualify the business for a landscape contracting business license, but who is not licensed as a landscape construction professional. The courses required by the board shall be designed to educate the owner or managing employee regarding business practices and Oregon laws affecting landscape contracting businesses. The board may not require an owner or managing employee to take a total of more than 16 hours of instruction.

(5) When adopting rules to carry out subsection (4) of this section, the board shall consider the availability of courses in the regions of this state. The board shall encourage course providers to use the most up-to-date technology to make courses widely available.

(6) A course provider may submit information regarding course materials, examinations and instructor qualifications to the board for approval. The board shall approve courses if the course materials, examinations and instructors meet board requirements. The board shall periodically review approved courses to ensure continuing compliance with board requirements. The board shall develop and make available a list of providers that offer courses that will enable an owner or managing employee to comply with the requirements of subsection (2) of this section. [2007 c.249 §2; 2009 c.11 §84]

Note: Sections 4 and 5, chapter 249, Oregon Laws 2007, provide:

Sec. 4. If a licensed landscape contracting business does not have at least one owner or managing employee, both as defined in ORS 671.595, who is licensed as a landscape construction professional under ORS 671.560, and the landscape contracting business license was initially issued by the State Landscape

Contractors Board on or after January 1, 2008, and before January 1, 2009, upon applying to renew that license the applicant shall provide the board with proof that an owner or managing employee has completed required courses described in ORS 671.595 and passed an examination on the subject of those courses. [2007 c.249 §4; 2009 c.11 §86]

Sec. 5. Section 4 of this 2007 Act is repealed January 2, 2012. [2007 c.249 §5]

671.600 New landscape contracting business license required upon change of ownership; notification of change of address. (1) A new landscape contracting business license shall be required whenever there is a change in ownership, irrespective of whether the business name is changed. As used in this subsection, “change in ownership” does not include a change in the holders of corporate stock.

(2) If a licensee moves to another location, relicensing is not required but the licensee must notify the State Landscape Contractors Board promptly of the new address. [1971 c.764 §10; 1973 c.832 §31; 1987 c.461 §1; 2007 c.541 §24]

671.603 Persons required to give notification of change of address; communications delivered to last-known address. (1) A landscape construction professional or person operating as a landscape contracting business shall notify the State Landscape Contractors Board of a change of address for the professional or business that occurs while the professional or business is licensed by the board or within one year after a license expires. The landscape construction professional or landscape contracting business shall ensure that the board receives notice of the change of address no later than the 10th day after the change of address occurs.

(2) Initial notice of a contested case or arbitration directed by the board to the last-known address of record for a landscape construction professional or landscape contracting business is considered delivered to the professional or business when deposited in the United States mail and sent registered, certified or post office receipt secured. Any other communication directed by the board to the last-known address of record for a landscape construction professional or landscape contracting business is considered delivered to the professional or business when deposited in the United States mail, regular mail. [2001 c.409 §14; 2005 c.609 §13; 2007 c.541 §25]

671.605 Effect of change in partners or corporate owners; fee. A partnership or corporation licensed as a landscape contracting business shall notify the State Landscape Contractors Board immediately upon any change in partners or corporate owners or in the percentage of an ownership interest in the landscape contracting business. Upon a change in partners, a licensed partnership immediately shall apply for a new license and pay to the board the fee required by ORS 671.650 for an original license. [1983 c.452 §11; 2007 c.541 §26]

671.607 License refusal or suspension for landscape contracting business debt; rules. (1) As used in this section:

(a) "Landscape contracting business debt" means an amount owed under:

(A) A final order or arbitration award issued under ORS 671.703; or

(B) A judgment or civil penalty arising from landscape contracting business activities in any state.

(b) "Landscape contracting business license" means a license issued within the United States to engage in a landscape contracting business.

(c) "Officer" means any of the following persons:

(A) A president, vice president, secretary, treasurer or director of a corporation.

(B) A general partner in a limited partnership.

(C) A manager in a manager-managed limited liability company.

(D) A member of a member-managed limited liability company.

(E) A trustee.

(F) A person qualifying as an officer under board rules. The definition of officer adopted by board rule may include persons not listed in this paragraph who may exercise substantial control over a business.

(d) "Owner" means a sole proprietor of, general partner in or holder of a controlling interest in a business, or a person defined as an owner by board rule.

(2) The board shall adopt rules defining an owner for purposes of subsection (1) of this section. The rules may not define an owner in a manner that includes an investor who has no right to manage a business, including but not limited to:

(a) A person who is solely a minority shareholder in a corporation;

(b) A member of a manager-managed limited liability company; or

(c) A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership.

(3) The board may suspend or refuse to issue a landscape contracting business license if:

(a) The business owes a landscape contracting business debt or has had a landscape contracting business license revoked;

(b) An owner or officer of the landscape contracting business owes a landscape contracting business debt or has had a landscape contracting business license revoked; or

(c) An owner or officer of the landscape contracting business was an owner or officer of another business at the time the other business incurred a landscape contracting business debt that is owing or at the time of an event that resulted in the revocation of the other business's landscape contracting business license.

(4) The board may hold the suspension or refusal of a license under subsection (3) of this section in abeyance if the person owing a landscape contracting business debt is adhering to a board-approved plan for restitution of the amount owed. [2005 c.609 §7; 2007 c.149 §4; 2007 c.541 §27]

671.610 Grounds for sanctions against licensee; suspension or refusal of license without prior hearing; hearing; effect of revocation; civil penalty; rules. (1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape construction professional or landscape contracting business that does any of the following:

(1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape construction professional or landscape contracting business that does any of the following:

(a) Obtains or attempts to obtain a license under ORS 671.510 to 671.760 by fraud or material misrepresentation.

(b) Makes a material misrepresentation about the quality of any material or service the person provides.

(c) Performs defective work.

(d) Furnishes defective materials.

(e) Makes misleading statements when advertising services or materials.

(f) Violates a provision of ORS 671.510 to 671.760.

(g) Fails to have a replacement bond, letter of credit or deposit on file at the time of a termination, cancellation, reduction or withdrawal of the bond, letter of credit or deposit required by ORS 671.690.

(h) Fails to maintain public liability, personal injury and property damage insurance as required by ORS 671.565 throughout a licensing period.

(i) Fails to comply with ORS 671.527 or 671.562.

(j) Fails to provide evidence of workers' compensation coverage as described in ORS 671.565.

(k) Violates a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

(L) Performs work for which a permit is required under the state building code without obtaining the

required permit, if the work results in the filing of a claim with the board.

(m) Violates a rule or order of the board.

(n) Refuses to comply with a subpoena issued by the board.

(o) Fails to pay in full any amount owed to a claimant under a final order of the board or an arbitration award, or under a judgment rendered in this or any other state.

(p) Does not make payment, including any interest due, for labor or materials contracted for by the person pursuant to a contract for a public improvement within 90 days after the date the person receives payment from a public contracting agency or, if the person is a subcontractor, from the contractor.

(q) Engages in conduct as a landscape construction professional or landscape contracting business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

(r) Fails to comply with the requirements of ORS 652.120.

(s) Is convicted of a crime under ORS 163.115, 163.185, 163.225, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the facts supporting the conviction and all intervening circumstances make the determination to suspend, revoke or refuse to issue or renew the license consistent with ORS 670.280.

(2) The board may suspend or refuse to renew the license of a landscape construction professional or landscape contracting business without prior hearing if, after investigating and setting forth in writing the facts supporting the action, the board determines that continued activity by the landscape construction professional or landscape contracting business poses an imminent threat of serious harm to the public welfare. Facts sufficient to support a suspension or refusal to renew under this subsection include, but are not limited to:

(a) The lack of a surety bond, letter of credit or deposit required under ORS 671.690;

(b) The lack of public liability, personal injury or property damage insurance required under ORS 671.565;

(c) The lack of workers' compensation insurance that is required of the licensee under ORS 671.562;

(d) The hiring of employees while licensed as exempt under ORS 671.525;

(e) Conduct as a landscape construction professional or a landscape contracting business that is dishonest;

(f) Operation of a landscape contracting business that does not employ at least one licensed landscape construction professional; or

(g) The failure to notify the board of any unpaid court judgment, arbitration award or administrative agency final order as required by ORS 671.563.

(3) A person whose license is suspended or refused renewal under subsection (2) of this section may request a hearing within 90 days after receiving the notice of the suspension or refusal to renew. Except as provided in this subsection, the board shall give a contested case hearing requested under this subsection priority over other hearings and schedule the hearing for the earliest practicable date. If a citation is issued to the person and the order of suspension or refusal to renew will terminate by its terms if a court renders a final judgment regarding the citation in favor of the person, the person may request that the board hold the requested contested case hearing in abeyance until after the court has rendered a final judgment.

(4) A person whose license is revoked under this section is not eligible to apply for a license under ORS 671.510 to 671.760 until two years after the effective date of the revocation.

(5) The board may suspend, revoke or refuse to reissue the license of a landscape contracting business, and may impose a civil penalty, all as provided under ORS 671.997 (4), if the board determines, after notice and opportunity for a hearing, that the landscape contracting business was working with other landscape contracting businesses on the same task and work site where one of the landscape contracting businesses is licensed as an exempt independent contractor under ORS 671.525 (2)(b) and the total number of landscape contracting businesses working on the task exceeded:

(a) Two sole proprietors;

(b) One partnership;

(c) One corporation; or

(d) One limited liability company.

(6) The board shall provide by rule a process and criteria that must be met for restoration of a license that has not been permanently revoked. [1971 c.764 §11; 1981 c.536 §23; 1987 c.461 §2; 1989 c.944 §2; 1995 c.645 §1; 1997 c.337 §3; 2001 c.924 §26; 2005 c.609 §14; 2007 c.151 §4; 2007 c.541 §28; 2009 c.11 §87; 2011 c.283 §5]

671.613 Sanction for failure to comply with certain laws; civil penalty. (1) The failure of a landscape contracting business to comply with the provisions of this section and ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600, 671.525, 671.530 and 671.575 or to be in conformance with the provisions of ORS 279.835 to 279.855 or ORS chapter 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension of the landscape contracting business license, revocation of the landscape contracting business license, refusal to issue or reissue a landscape

contracting business license, assessment of a civil penalty as set forth in ORS 671.997 or a combination of these sanctions.

(2) Any action against a landscape contracting business under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497. [1991 c.533 §9; 1999 c.535 §5; 2001 c.108 §2; 2003 c.794 §315; 2007 c.541 §29]

671.614 Placement on probation; conditions; failure to fulfill conditions. (1) The State Landscape Contractors Board may issue an order placing a landscape contracting business, or any landscape construction professional that is employed by the landscape contracting business or is a landscape contracting business owner or officer as defined in ORS 671.607, on probation if three or more claims are filed against the landscape contracting business's bond, letter of credit or deposit within a 12-month period.

(2) The board may place a landscape contracting business or landscape construction professional on probation under this section only if the board determines after investigation of the complaints that a significant likelihood exists that continued activity by the landscape contracting business or landscape construction professional without board supervision will result in additional claims against the landscape contracting business.

(3) The board may require as a condition of probation imposed under this section that the landscape construction professional take a board-approved education course in one or more subjects relating to landscape operations.

(4) The board may require as a condition of probation imposed under this section that the owner or officer of the landscape contracting business take a board-approved education course in one or more subjects relating to landscape contracting business or general business practices.

(5) The board may take action to suspend, revoke or refuse to renew the license of the landscape contracting business or landscape construction professional if the business or professional fails to fulfill the conditions of the probation. [2005 c.609 §4; 2007 c.541 §30; 2009 c.11 §88]

671.615 Installation of backflow assemblies; qualification rules. The State Landscape Contractors Board may license a landscape construction professional to install backflow assemblies for irrigation systems and ornamental water features. The board, by rule, shall establish qualifications for issuance of a license under this section. A landscape construction professional may install a backflow assembly only if the landscape construction

professional is licensed under this section and is the owner of, or employed by, a licensed landscape contracting business. A landscape construction professional installing a backflow assembly may tap into the potable water supply only at a point after the connection between the water system and the customer, as that connection is defined in ORS 448.115. [1987 c.561 §2; 1989 c.944 §3; 1995 c.645 §2; 2001 c.181 §2; 2005 c.609 §15; 2007 c.541 §31]

671.617 Examination for backflow assembly installer license. The State Landscape Contractors Board shall consult with the State Plumbing Board in developing any written and practical examinations for backflow assembly installer licenses. [1989 c.944 §4; 2005 c.609 §16]

671.625 Minimum standards for contracts and billings; rules; compliance; effect of noncompliance.

(1) The State Landscape Contractors Board shall by rule adopt minimum standards for written contracts and billings of the landscape contracting businesses. The standards shall set forth requirements for information that must be contained in contracts and billings. The information required shall be any information the board determines is necessary to provide protection for consumers of the services and materials provided by landscape contracting businesses.

(2) Work by a landscape contracting business subject to ORS 671.510 to 671.760 shall only be performed subject to a written contract. Any contract or billing for such work must conform to the standards adopted under subsection (1) of this section.

(3) A contract that does not substantially comply with this section may not be enforced by a landscape contracting business in any court or other proceedings within this state. [1979 c.840 §13; 1983 c.452 §12; 2007 c.541 §32]

(Landscape Contractors Board)

671.630 State Landscape Contractors Board; members. The State Landscape Contractors Board shall operate as a semi-independent state agency subject to ORS 182.456 to 182.472 for purposes of carrying out the provisions of ORS 671.510 to 671.760, 671.990 (2) and 671.997. The board shall consist of seven members appointed by the Governor. The Governor shall make appointments to the board from all segments of the landscape contracting industry. At least two board members must be public members. [1971 c.764 §14; 1973 c.832 §32; 1975 c.757 §7; 1981 c.536 §24; 1987 c.414 §46; 1993 c.744 §192; 2001 c.409 §6]

671.650 License fees. (1) The State Landscape Contractors Board shall establish fees, including but not limited to annual landscape construction professional license fees and annual landscape contracting business license fees.

(2) The license fee for an out-of-state landscape contracting business operating in Oregon must be the same as for an Oregon landscape contracting business. [1971 c.764 §17; 1973 c.832 §34; 1981 c.536 §25; 1983 c.452 §13; 1989 c.450 §1; 1997 c.327 §2; 2001 c.409 §7; 2007 c.541 §33]

671.655 Deposit of moneys. Except as the State Landscape Contractors Board may otherwise provide under ORS 182.462 (1)(e), the board shall deposit moneys received as fees or civil penalties into the account created by the board pursuant to ORS 182.470. [2005 c.609 §6; 2011 c.110 §5]

671.660 Renewal of licenses; effect of lapse; penalty fees. (1) The fee for renewal of a license issued under ORS 671.510 to 671.760 shall be paid annually on or before the last day of the month of the anniversary of issuance.

(2) The State Landscape Contractors Board may not issue a new license to a person who has been previously licensed under ORS 671.510 to 671.760 and whose license has expired, unless the person makes written application on a form approved by the board and pays the required annual fee. The board may require the person to also pay a penalty fee.

(3) If a license lapses for two years or more, the person must reapply as for initial issuance of the license.

(4) When a landscape contracting business renews its license, the business must submit the names of all employees who are licensed landscape construction professionals.

(5) When a person renews a landscape construction professional license, the person must:

(a) Submit the name of the employer if the person is currently performing landscaping work; and

(b) Demonstrate that the person has complied with the continuing education requirement adopted by the board. [1971 c.764 §18; 1973 c.832 §35; 1977 c.873 §5; 1983 c.452 §14; 2001 c.409 §8; 2007 c.550 §§3,6]

671.670 Rulemaking authority. In accordance with any applicable provision of ORS chapter 183, the State Landscape Contractors Board may adopt rules the board considers reasonable for the administration and enforcement of ORS 671.510 to 671.760 and 671.997. [1971 c.764 §19; 1981 c.536 §26; 2005 c.609 §17]

671.676 Continuing education; rules. (1) The State Landscape Contractors Board shall adopt rules establishing continuing education requirements for landscape construction professionals. The board may not require landscape construction professionals to take more than 10 hours of continuing education every year.

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

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

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

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

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

(d) Online or other forms of educational programs.

(4) The board may adopt rules establishing grounds for obtaining a waiver of the continuing education requirements for landscape construction professionals. The board may not allow a waiver for more than two consecutive years except for a waiver due to military service, retirement, disability, absence from the state, inactive status or extreme hardship. [2007 c.550 §2; 2007 c.550 §5]

671.681 Advisory and technical committees. (1) To aid and advise the State Landscape Contractors Board in the performance of the functions of the board, the board administrator may establish such advisory and technical committees as the administrator considers necessary. These committees may be continuing or temporary. The administrator shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The administrator is an ex officio member of each committee.

(2) Members of the committees are not entitled to compensation, but the board may fix and pay to the committee members from the funds available to the board per diem and actual and necessary travel and other expenses incurred by the committee members in the performance of their official duties. [2007 c.399 §1]

Note: 671.681 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 671 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Claims)

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

(a) \$3,000 for an applicant, unless the applicant is described in paragraph (b), (c) or (d) of this subsection.

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

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

(d) \$15,000 for an applicant who charges \$25,000 or more for a landscape job.

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

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

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

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

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

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

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

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

(c) The installation by the landscape contracting

business of landscape irrigation control wiring and outdoor landscape lighting as described in ORS 479.940.

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

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

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

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

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

(7) The landscape contracting business is responsible for all work subject to ORS 671.510 to 671.760 that is performed or contracted for by the business. [1973 c.832 §29b; 1979 c.840 §6; 1983 c.452 §15; 1991 c.331 §103; 1995 c.645 §3; 1997 c.631 §520; 1999 c.32 §3; 2001 c.198 §2; 2005 c.609 §18; 2007 c.149 §5; 2007 c.541 §35; 2011 c.104 §1]

671.695 Types of claims. A claim against a licensed landscape contracting business is payable from the bond, letter of credit or deposit required of the landscape contracting business under ORS 671.690 only if the claim arises from the performance, or a contract for the performance, of work that is subject to ORS 671.510 to 671.760. The claim must be of one or more of the following types:

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

(a) Negligent work.

(b) Improper work.

(c) Breach of contract.

(2) A claim against the landscape contracting business by the property owner or the owner's agent to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 or 87.075 to 87.093. The State Landscape Contractors Board may reduce a claim described in this subsection by any amount the claimant owes the landscape

contracting business. The board shall process claims described in this subsection only if:

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

(b) A lien established against the property of the owner under ORS 87.010 to 87.060 or 87.075 to 87.093 is filed because the landscape contracting business failed to pay the person claiming the lien for that person's contribution toward completion of the improvement.

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

(a) Negligent work.

(b) Improper work.

(c) Breach of contract.

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

(5) A claim, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to the landscape contracting business. The minimum limit set by the board may not be more than \$150.

(6) A claim by a subcontractor against the landscape contracting business for unpaid labor or materials arising out of a contract. [2007 c.149 §2; 2007 c.541 §37b]

671.700 Notice of claim; timeliness; board authority over dispute. (1) If a claim is filed with the State Landscape Contractors Board against a licensed landscape contracting business for payment from the bond, letter of credit or deposit required of the business under ORS 671.690, the board may resolve the dispute involving the landscape contracting business.

(2) A person having a claim against a landscape contracting business shall give the board notice of the claim in writing 90 days before any action on the bond, letter of credit or deposit is commenced.

(3) The board may not accept a claim against a landscape contracting business for processing if the claim is not filed with the board within one year after the business substantially completed work. The board may not issue an order for the payment of a court judgment or arbitration award from the bond, letter of credit or deposit of a landscape contracting business unless the person has timely filed with the board a claim against the business regarding the same matter that resulted in the judgment or award. [1973 c.832 §29c; 1983 c.452 §16; 1987 c.461 §3; 2007 c.149 §6; 2007 c.541 §36a]

671.703 Investigation of claim; resolution processes; dismissal of claim; rules. (1) Upon acceptance of a claim described in ORS 671.695, the State Landscape Contractors Board shall initiate an investigation. Upon completion of the investigation, if the board determines that facts exist supporting an order for payment, the board may order the landscape contracting business to pay the claim. A party to the claim may request a hearing on the order issued by the board.

(2) Subject to subsection (5) of this section, if the resolution of the claim requires a hearing, the board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (4) of this section.

(3) The board may use arbitration, mediation or other forms of dispute resolution to resolve a landscaping dispute between any parties who agree to follow the rules of the board, including parties to a dispute that is not a claim described in ORS 671.695.

(4) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (2) and (3) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with ORS 671.510 to 671.760;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.760; and

(e) Include any other provision necessary to conform the arbitration to ORS 671.510 to 671.760.

(5) A party to a claim that is subject to a board order of binding arbitration under subsection (2) of this section may avoid the arbitration if the party requests to have the claim resolved through a contested case hearing or files a complaint in a court. A party making a request or filing a complaint under this subsection is subject to the following provisions:

(a) If the party requests to have a claim resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a complaint in a court, the

party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by the board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed by the licensed landscape contracting business against whom a claim is alleged, the complaint may be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the claimant to file a response alleging the elements of the claim. The claimant has the burden of proving the elements of the claim in any action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or complaint to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or complaint under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a complaint in compliance with paragraph (b) of this subsection, the filing of the complaint supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a complaint.

(6) An arbitration conducted under subsection (2) or (3) of this section must be held before an administrative law judge acting as arbitrator. The administrative law judge assigned to act as arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings established under ORS 183.605. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

(7) If a party to a claim described in ORS 671.695 requests a contested case hearing, the board shall schedule the hearing. If a party files a court action to determine the matter described in the claim, the board shall suspend further processing of the claim until the action is resolved by an appropriate court.

(8) If the matter described in a claim is submitted for determination by a court, the board may require that the claimant provide status reports on the pending action. The board may dismiss or close a claim described in ORS 671.695 as established by rule of the board if the claimant fails to submit status reports on a

pending action.

(9) If a final order or arbitration award is issued under this section and the landscape contracting business does not pay the claim on or before the 30th day after receiving the order, the board shall order the claim paid out of the bond, letter of credit or deposit filed under ORS 671.690.

(10) The board may dismiss or close a claim as established by rule of the board if:

(a) The claimant does not permit the person against whom the claim is filed to be present at any on-site investigation made by the board; or

(b) The board determines that the person against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the person to comply with the recommendations. The board may dismiss or close a claim under this paragraph only if the person was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(11) The board may suspend processing a claim if the board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim. [1979 c.840 §8; 1983 c.452 §17; 1987 c.461 §4; 1989 c.153 §1; 1991 c.533 §2; 1995 c.645 §4; 2001 c.198 §§3,4; 2003 c.75 §56; 2003 c.598 §§48,49; 2007 c.149 §7; 2007 c.541 §37a]

671.707 Actions following final order of board.

(1) If a final order of the State Landscape Contractors Board is not paid by the landscape contracting business, the board shall notify the surety on the business's bond.

(2) An order of the board that determines a claim under ORS 671.703 that becomes final by operation of law or on appeal and remains unpaid for 20 days after the order becomes final is an order in favor of the claimant against the landscape contracting business and may be recorded with the county clerk in any county of this state.

(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126. [1979 c.840 §10; 1999 c.153 §1; 2007 c.149 §8; 2007 c.541 §38a]

671.710 Priority on satisfaction of claims.

(1) Determinations by the State Landscape Contractors Board or judgments against the surety bond, letter of credit or deposit of a landscape contracting business for claims filed during a 90-day period shall be satisfied in

the priority listed in subsections (2) to (4) of this section. The payment of a claim filed during a 90-day period has priority over any claim filed during a subsequent 90-day period. A 90-day period begins on the date the first claim is filed with the board. A subsequent 90-day period begins on the date the first claim is filed with the board after the close of the preceding 90-day period.

(2) Determinations and judgments as a result of claims filed within a 90-day period against a landscape contracting business by owners of property upon which landscaping work was performed or was contracted to perform, or by the agents of the owner, have payment priority to the full extent of the bond, letter of credit or deposit over all other claims filed within the same 90-day period.

(3) If the total of all claims filed against a landscape contracting business by property owners or their agents under subsection (2) of this section within a 90-day period does not exhaust the bond, letter of credit or deposit, amounts due as a result of all other claims filed within the same 90-day period may be satisfied from the remainder of the bond, letter of credit or deposit, except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000.

(4) If the total of all claims against a landscape contracting business within a single 90-day period exceeds the amount of the bond, letter of credit or deposit available for payment of those claims, payment from the bond, letter of credit or deposit shall be apportioned as the board determines, subject to the claim payment priorities established under this section.

(5) The total amount paid from any one bond for recovery of dispute resolution costs, interest and attorney fees may not exceed \$3,000. [1973 c.832 §29d; 1979 c.840 §11; 1983 c.452 §19; 1999 c.34 §1; 2005 c.609 §19; 2007 c.149 §9; 2007 c.541 §39]

671.720 [1975 c.757 §11; 1987 c.461 §5; 1991 c.734 §66; 1995 c.645 §5; 1997 c.337 §4; 2001 c.108 §3; 2001 c.409 §9a; renumbered 671.955 in 2001]

(Local Business Licenses)

671.750 Portland metropolitan area business licenses. The Legislative Assembly intends to reduce the number of city business licenses that a landscape contracting business must obtain to conduct business in the Portland metropolitan area. The purpose of this section and ORS 671.755 is to enable a landscape contracting business to secure from the metropolitan service district one business license that will permit the landscape contracting business to conduct business in cities in which the landscape contracting business performs a limited amount of work and in which it

does not have a principal place of business. The Legislative Assembly also intends that this section and ORS 671.755 apply only to landscape contracting businesses without regard to any subsequent expansion of the jurisdiction of the State Landscape Contractors Board over other businesses. It is the policy of this state that, to the maximum extent possible consistent with the requirements of this section and ORS 671.755, the cities within the boundaries of the metropolitan service district be allowed to control the imposition of business license taxes and to maintain the level of revenues obtained from those taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect the landscape contracting business activity within the participating cities. [2007 c.541 §46]

671.755 Issuance of business license by metropolitan service district; city business license tax. (1) As used in this section:

(a) "Business license tax" means any fee paid by a person to a city or county for any form of license that is required by the city or county in order to conduct business in that city or county. "Business license tax" does not mean a franchise fee or privilege tax imposed by a city upon a public utility under ORS 221.420 or 221.450 or under a city charter.

(b) "Conducting business" means engaging directly, or through officers, agents and employees, in an activity in pursuit of gain.

(c) "Principal place of business" means the location in this state of the central administrative office of a person conducting business in this state.

(d) "Within a metropolitan service district" means that city limits are wholly or partially inside district boundaries.

(2) A landscape contracting business shall pay directly to any city within a metropolitan service district any business license tax imposed by the city if:

(a) The landscape contracting business has its principal place of business within the city; or

(b) The landscape contracting business does not have its principal place of business within the city but derives gross receipts of \$250,000 or more from conducting business within the city during the calendar year for which the tax is owed.

(3) A landscape contracting business may apply for a business license from a metropolitan service district if the business conducts business in a city that is within the district but that is not a city to which the business directly pays a business license tax for that year.

(4) The metropolitan service district shall issue a business license to a landscape contracting business if:

(a) The business proves to the district that the business has directly paid the business license tax

imposed by each city within the district to which the business must directly pay a business license tax; and

(b) The business pays a license fee to the district.

(5) The license fee charged under subsection (4) of this section shall be twice the average business license tax charged to landscape contracting businesses by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section.

(6) If a landscape contracting business is issued a business license by the metropolitan service district under subsection (4) of this section, and a city within the district other than a city described in subsection (2) of this section demands that the business pay a business license tax, the demanding city shall waive payment of the tax if the business proves by possession or otherwise that the business has a business license issued by the metropolitan service district for the calendar year for which the tax is owed.

(7) The metropolitan service district shall distribute the business license fees collected by the district under this section, less administrative expenses, to the cities within the district that collect a business license tax. In any year, each of the cities shall receive a share of the license fees based upon the proportion that the number of residential building permits the city issued during the year bears to the total number of residential building permits issued during the year by all of the cities within the district. The district shall determine the number of residential building permits issued by cities within the district from statistics and other data published by the State Housing Council. A district shall distribute moneys under this subsection at least once each year. [2007 c.541 §47]

671.760 Business income tax. (1) As used in this section, “business license tax” has the meaning given that term in ORS 671.755.

(2) A city that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city is exempt from ORS 671.755. [2007 c.541 §48]

(Penalties)

671.990 Penalties for violations of ORS 671.010 to 671.220 or 671.530. (1) Violation of any of the provisions of ORS 671.010 to 671.220 is subject to the provisions of ORS 671.220.

(2) Violation of ORS 671.530 is a misdemeanor. [Subsection (2) enacted as 1961 c.431 §24; subsection (3) enacted as 1971 c.764]

671.997 Civil penalties for violations of ORS 671.510 to 671.760. (1) Except as provided in subsection (4) of this section, a person who violates any provision of ORS 671.510 to 671.760 or a rule adopted pursuant to ORS 670.310, 670.605 or 671.670 shall forfeit and pay to the State Landscape Contractors Board a civil penalty in an amount determined by the board of not more than \$2,000 for each offense.

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

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

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

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

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

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

(d) Revocation of license for three years for a fourth offense; and

(e) Permanent revocation of the landscape contracting business’s license for a fifth offense. [Formerly 671.955; 2007 c.541 §40; 2009 c.11 §89]

Chapter 87:

Construction Liens

87.001 Short title. ORS 87.001 to 87.060 and 87.075 to 87.093 shall be known and may be cited as the Construction Lien Law. [1975 c.466 §1]

87.005 Definitions for ORS 87.001 to 87.060 and 87.075 to 87.093. As used in ORS 87.001 to 87.060 and 87.075 to 87.093:

(1) “Commencement of the improvement” means the first actual preparation or construction upon the site or the first delivery to the site of materials of such substantial character as to notify interested persons that preparation or construction upon the site has begun or is about to begin.

(2) “Construction” means creating or making an improvement or performing an alteration, partial construction or repair in and upon an improvement.

(3) “Construction agent” means a contractor, architect, builder or other person having charge of construction or preparation.

(4) “Contractor” means a person that contracts on predetermined terms to be responsible for performing

all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of the means, method and manner of accomplishing the desired result, and that provides:

(a) Labor at the site; or

(b) Materials, supplies and labor at the site.

(5) "Improvement" means a building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct or other structure or superstructure.

(6) "Mortgagee" means a person:

(a)(A) Whose name and address appear as mortgagee or beneficiary in a mortgage of record or a trust deed of record that is recorded under ORS 205.234 with the county clerk of the county within which the property or improvement is located; and

(B) That has a valid subsisting mortgage of record or trust deed of record that secures a loan upon land or upon an improvement; or

(b)(A) Whose name and address appear as the assignee of the mortgagee or beneficiary in an assignment of mortgage of record or a trust deed of record that is recorded under ORS 205.234 with the county clerk of the county within which the property or improvement is located; and

(B) That has a valid subsisting mortgage of record or trust deed of record that secures a loan upon land or upon an improvement.

(7) "Original contractor" means a contractor that has a contractual relationship with the owner.

(8) "Owner" means:

(a) A person that is or claims to be the owner in fee or a lesser estate of the land on which preparation or construction is performed;

(b) A person that entered into a contract to purchase an interest in the land or improvement sought to be charged with a lien created under ORS 87.010; or

(c) A person that has a valid lease on land or an improvement and that possesses an interest in the land or improvement by reason of the lease.

(9) "Preparation" means excavating, surveying, landscaping, demolishing or detaching existing structures or leveling, filling in or otherwise making land ready for construction.

(10) "Site" means the land on which construction or preparation is performed.

(11) "Subcontractor" means a contractor that has no direct contractual relationship with the owner.

[Amended by 1957 c.651 §1; 1973 c.671 §1; 1975 c.466 §2; 1977 c.596 §1; 2005 c.22 §52; 2011 c.505 §1]

87.007 Protection from construction liens perfected after sale of residential property completed; requirements; seller options; rules; delivery of form to purchaser; penalty; damages; defenses. (1) This section applies to a sale of the following residential property:

(a) A new single family residence or a single family residence where the sales price is \$50,000 or more for original construction or the contract price is \$50,000 or more for improvements to the residence completed within three months before the date the property is sold.

(b) A new condominium unit or a condominium unit where the sales price is \$50,000 or more for original construction or the contract price is \$50,000 or more for improvements to the condominium unit completed within three months before the date the property is sold. As used in this paragraph, "condominium unit" has the meaning given that term in ORS 100.005.

(c) A new residential building or a residential building where the sales price is \$50,000 or more for original construction or the contract price is \$50,000 or more for improvements to the residential building completed within three months before the date the property is sold. As used in this paragraph, "residential building" means a building or structure that contains not more than four dwelling units capable of use as residences or homes.

(2) An owner of record at the time the owner of record sells residential property to a purchaser shall protect the purchaser from claims of lien that arise before the date on which the sale is complete but that may become perfected under ORS 87.035 after the date on which the sale is complete by one of the following methods:

(a) Purchase or otherwise provide title insurance on the purchaser's behalf by means of a policy issued:

(A) Without exception for filed and unfiled claims of construction lien that exist at the closing date of the purchase; and

(B) On forms and at rates filed with, but not disapproved by, the Director of the Department of Consumer and Business Services.

(b) Retain in escrow, as defined in ORS 696.505, an amount of funds that is not less than 25 percent of the sale price of the residential property. The funds must be maintained in or released from escrow in accordance with written instructions to the escrow agent from the purchaser and the owner that sold the property. The written instructions shall require the escrow agent to pay upon the purchaser's demand a claim of lien that is perfected after the date of the sale of the property and that the owner that sold the property has not paid. The escrow agent shall make the

payment from the amount maintained in escrow. The escrow agent shall release the unused funds from escrow to the owner that sold the property if the escrow agent receives a request from the owner that sold the property and the owner that sold the property provides documentation from a title company that:

(A) A claim of lien has not been perfected against the property and 90 days have passed since the date that construction was completed; or

(B) A claim of lien has been perfected against the property, that 135 days have passed since the date that each such claim of lien was filed and that all perfected claims of lien have been released or waived.

(c) Maintain a bond or letter of credit in an amount that is not less than 25 percent of the sale price of the property. The Construction Contractors Board shall prescribe by rule the amount, terms and conditions of the bond or letter of credit to be maintained under this paragraph.

(d) Obtain written waivers from every person that claims or perfects a lien or liens under ORS 87.010 or 87.035 that, in an aggregate amount, exceed \$5,000 with respect to the property and provide copies of the waivers to the purchaser not later than the date the sale of the property is completed.

(e) Complete the sale of the residential property after the deadline for perfecting a claim of lien under ORS 87.035 with respect to the property.

(3) Not later than the date on which the sale of the residential property is completed, the owner who sold the property shall complete, sign and deliver to the purchaser a form that specifies the method that the owner has selected to comply with the requirements of subsection (2) of this section or that states that subsection (2) of this section does not apply to the sale of the property. The notice must be in a form the Construction Contractors Board designates by rule under ORS 701.235.

(4) A real estate licensee, as defined in ORS 696.010, acting in the professional capacity of a licensee is not liable in a criminal, civil or administrative proceeding that arises out of the failure of an owner of record to comply with subsection (2) or (3) of this section.

(5) Violation of subsection (3) of this section is a Class A violation.

(6) In addition to any other remedy or penalty provided by law, a purchaser may bring an action to recover up to twice the amount of actual damages caused by a violation of subsection (2) of this section. The court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees. Any action brought under this subsection must be commenced not later than two years after the date on which the sale of the property is completed.

(7) For purposes of subsections (5) and (6) of this section and ORS 646.608:

(a) It is a defense to a violation of subsection (2) or (3) of this section that no enforcement or attempt to enforce a claim of lien against the property that is the subject of the sale occurred before the date the sale of the property was completed; and

(b) As to a claim of lien, it is a defense to a violation of subsection (2) or (3) of this section if the owner that sold the property:

(A) Proves that the claim of lien against the property that is the subject of the sale is invalid; or

(B) Satisfies the claim of lien or obtains a release from the claim of lien on the property that is the subject of the sale.

(8) A violation of subsection (2) or (3) of this section does not occur with respect to a lien described in ORS 87.010 during the period that the validity of the lien is disputed in a judicial proceeding or a proceeding described in ORS chapter 701.

(9) Nothing in this section requires the payment of a lien that is not otherwise valid. This section does not apply to claims of lien perfected by persons that furnish materials, equipment, services or labor at the request of the purchaser of the residential property. [2003 c.778 §2; 2010 c.77 §1]

87.010 Construction liens; who is entitled to lien. (1) Any person performing labor upon, transporting or furnishing any material to be used in, or renting equipment used in the construction of any improvement shall have a lien upon the improvement for the labor, transportation or material furnished or equipment rented at the instance of the owner of the improvement or the construction agent of the owner.

(2) Any person who engages in or rents equipment for the preparation of a lot or parcel of land, or improves or rents equipment for the improvement of a street or road adjoining a lot or parcel of land at the request of the owner of the lot or parcel, shall have a lien upon the land for work done, materials furnished or equipment rented.

(3) A lien for rented equipment under subsection (1) or (2) of this section shall be limited to the reasonable rental value of the equipment notwithstanding the terms of the underlying rental agreement.

(4) Trustees of an employee benefit plan shall have a lien upon the improvement for the amount of contributions, due to labor performed on that improvement, required to be paid by agreement or otherwise into a fund of the employee benefit plan.

(5) An architect, landscape architect, land surveyor or registered engineer who, at the request of the owner or an agent of the owner, prepares plans, drawings or

specifications that are intended for use in or to facilitate the construction of an improvement or who supervises the construction shall have a lien upon the land and structures necessary for the use of the plans, drawings or specifications so provided or supervision performed.

(6) A landscape architect, land surveyor or other person who prepares plans, drawings, surveys or specifications that are used for the landscaping or preparation of a lot or parcel of land or who supervises the landscaping or preparation shall have a lien upon the land for the plans, drawings, surveys or specifications used or supervision performed. [Amended by 1957 c.651 §2; 1973 c.671 §2; 1975 c.466 §3; 1977 c.596 §2; 1981 c.757 §1]

87.015 Land and interests therein subject to lien; leaseholds. (1) The site together with the land that may be required for the convenient use and occupation of the improvement constructed on the site, to be determined by the court at the time of the foreclosure of the lien, shall also be subject to the liens created under ORS 87.010 (1), (4) and (5) if, at the time of the commencement of the improvement, the person who caused the improvement to be constructed was the owner of that site and land. If the person owned less than a fee-simple estate in the site and land, then only the interest of the person therein shall be subject to the lien.

(2) If a lien created under ORS 87.010 (1), (4) and (5) is claimed against a unit as defined in ORS 100.005 to 100.910, the Oregon Condominium Act, the common elements appertaining to that unit are also subject to the lien.

(3) When the interest of the person who caused the improvement to be constructed is a leasehold interest, and that person has forfeited the rights of the person thereto, the purchaser of the improvement and leasehold term at any sale under the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, is deemed to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease. If the lessor regains possession of the property, or obtains judgment for the possession thereof prior to the commencement of construction of the improvement, the purchaser may remove the improvement within 30 days after the purchaser purchases it, and the owner of the land shall receive the rent due the owner, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of removal. [Amended by 1975 c.466 §4]

87.018 Delivery of notices. (1) Except as provided in ORS 87.093, all notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 must be in writing and

be delivered in person or by registered or certified mail.

(2) A notice that must be given under ORS 87.001 to 87.060 or 87.075 to 87.093 to a mortgagee must be delivered to the mortgagee only if the name and address of the mortgagee appear in a mortgage of record or a trust deed of record as required under ORS 205.234 (1)(b) or in the instrument that assigns a mortgage or trust deed as required under ORS 205.234 (1)(g). [1975 c.466 §5; 1981 c.757 §2; 2007 c.648 §15; 2011 c.505 §2]

87.021 Notice to owners; notice from owner to original contractor; effect of failure to give notice.

(1) Except when material, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) is furnished at the request of the owner, a person furnishing any materials, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) for which a lien may be perfected under ORS 87.035 shall give a notice of right to a lien to the owner of the site. The notice of right to a lien may be given at any time during the progress of the improvement, but the notice only protects the right to perfect a lien for materials, equipment and labor or services provided after a date which is eight days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, before the notice is delivered or mailed. However, no lien is created under ORS 87.010 (5) or (6) for any services provided for an owner-occupied residence at the request of an agent of the owner.

(2) The notice required by subsection (1) of this section shall be substantially in the form set forth in ORS 87.023.

(3)(a) Except as provided in paragraph (b) of this subsection, a lien created under ORS 87.010 (1) to (3), (5) or (6) may be perfected under ORS 87.035 only to the extent that the notice required by subsection (1) of this section is given.

(b) A person who performs labor upon a commercial improvement or provides labor and material for a commercial improvement or who rents equipment used in the construction of a commercial improvement need not give the notice required by subsection (1) of this section in order to perfect a lien created under ORS 87.010. As used in this paragraph:

(A) "Commercial improvement" means any structure or building not used or intended to be used as a residential building, or other improvements to a site on which such a structure or building is to be located.

(B) "Residential building" means a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes.

(4) Unless otherwise agreed or the lien claimant

who is required to give the notice under subsection (1) of this section is in privity with the original contractor, when a provision in an agreement for the construction of a commercial improvement requires the original contractor to hold an owner harmless or to indemnify an owner for a lien created under ORS 87.010 and perfected under ORS 87.035, that provision is not enforceable as to any lien which requires that a notice under this section be given to the owner unless a copy of the notice is delivered pursuant to ORS 87.018 to the original contractor not later than 10 days after its receipt by the owner. [1975 c.466 §7 (enacted in lieu of 87.020); 1981 c.757 §3; 1983 c.674 §1; 1983 c.757 §1; 1987 c.662 §1; 2001 c.311 §1; 2002 s.s.1 c.6 §§1,4; 2003 c.778 §10]

87.023 Notice of right to lien; form of notice.

The notice of right to a lien required under ORS 87.021 shall include, but not be limited to, the following information and shall be substantially in the following form:

NOTICE OF RIGHT TO A LIEN.
WARNING: READ THIS NOTICE.
 PROTECT YOURSELF FROM
 PAYING ANY CONTRACTOR
 OR SUPPLIER TWICE
 FOR THE SAME SERVICE.

To: _____ Date of mailing: _____
 Owner

 Owner's address

This is to inform you that _____ has begun to provide _____ (description of materials, equipment, labor or services) ordered by _____ for improvements to property you own. The property is located at _____.

A lien may be claimed for all materials, equipment, labor and services furnished after a date that is eight days, not including Saturdays, Sundays and other holidays, as defined in ORS 187.010, before this notice was mailed to you.

Even if you or your mortgage lender have made full payment to the contractor who ordered these materials or services, your property may still be subject to a lien unless the supplier providing this notice is paid.

THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the State of Oregon.

This notice has been sent to you by:

NAME: _____

ADDRESS: _____

TELEPHONE: _____

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US. IMPORTANT INFORMATION ON REVERSE SIDE

**IMPORTANT INFORMATION
 FOR YOUR PROTECTION**

Under Oregon's laws, those who work on your property or provide labor, equipment, services or materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors, material suppliers, rental equipment suppliers, service providers or laborers or neglects to make other legally required payments, the people who are owed money can look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with materials, equipment, labor or services must give you a notice of right to a lien to let you know what they have provided.

**WAYS TO PROTECT
 YOURSELF ARE:**

- **RECOGNIZE** that this notice of right to a lien may result in a lien against your property unless all those supplying a notice of right to a lien have been paid.

- **LEARN** more about the lien laws and the meaning of this notice by contacting the Construction Contractors Board, an attorney or the firm sending this notice.

- **ASK** for a statement of the labor, equipment, services or materials provided to your property from each party that sends you a notice of right to a lien.

- **WHEN PAYING** your contractor for materials, equipment, labor or services, you may make checks payable jointly to the contractor and the firm furnishing materials, equipment, labor or services for which you have received a notice of right to a lien.

- **OR** use one of the methods suggested by the "Information Notice to Owners." If you have not received such a notice, contact the Construction Contractors Board.

- GET EVIDENCE that all firms from whom you have received a notice of right to a lien have been paid or have waived the right to claim a lien against your property.

- CONSULT an attorney, a professional escrow company or your mortgage lender.

[1981 c.757 §5; 1983 c.757 §2; 1987 c.662 §2]

87.025 Priority of perfected liens; right to sell improvements separately from land; notice to mortgagee; list of materials or supplies. (1) A lien created under ORS 87.010 (2) or (6) and perfected under ORS 87.035 upon any lot or parcel of land shall be preferred to any lien, mortgage or other encumbrance which attached to the land after or was unrecorded at the time of commencement of the improvement.

(2) Except as provided in subsections (3) and (6) of this section, a lien created under ORS 87.010 (1), (4) or (5) and perfected under ORS 87.035 upon any improvement shall be preferred to all prior liens, mortgages or other encumbrances upon the land upon which the improvement was constructed. To enforce such lien the improvement may be sold separately from the land; and the purchaser may remove the improvement within a reasonable time thereafter, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If such removal is prevented by legal proceedings, the 30 days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal is taken.

(3) No lien for materials or supplies shall have priority over any recorded mortgage or trust deed on either the land or improvement unless the person furnishing the material or supplies, not later than eight days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, after the date of delivery of material or supplies for which a lien may be claimed delivers to the mortgagee either a copy of the notice given to the owner under ORS 87.021 to protect the right to claim a lien on the material or supplies or a notice in any form that provides substantially the same information as the form set forth in ORS 87.023.

(4) A mortgagee who has received notice of delivery of materials or supplies in accordance with the provisions of subsection (3) of this section, may demand a list of those materials or supplies including a statement of the amount due by reason of delivery thereof. The list of materials or supplies shall be delivered to the mortgagee within 15 days, not

including Saturdays, Sundays and other holidays as defined in ORS 187.010, of receipt of demand, as evidenced by a receipt or a receipt of delivery of a registered or certified letter containing the demand. Failure to furnish the list or the amount due by the person giving notice of delivery of the materials or supplies shall constitute a waiver of the preference provided in subsections (1) and (2) of this section.

(5) Upon payment and acceptance of the amount due to the supplier of materials or supplies, and upon demand of the person making payment, the supplier shall execute a waiver of all lien rights as to materials or supplies for which payment has been made.

(6) Unless the mortgage or trust deed is given to secure a loan made to finance the alteration or repair, a lien created under ORS 87.010 and perfected under ORS 87.035 for the alteration and repair of an improvement commenced and made subsequent to the date of record of a duly executed and recorded mortgage or trust deed on that improvement or on the site shall not take precedence over the mortgage or trust deed.

(7) The perfection of a lien under ORS 87.035 relates to the date of commencement of the improvement as defined in ORS 87.005. Except as provided in subsection (3) of this section, the date of creation of the lien under ORS 87.010 and the date of perfection of the lien under ORS 87.035 do not affect the priorities under this section, the equal priority of perfected lien claimants, or the distribution of proceeds to perfected lien claimants under ORS 87.060 (6). [Amended by 1965 c.446 §2; 1967 c.602 §2; 1975 c.466 §8; 1981 c.757 §6; 1983 c.513 §1; 1983 c.674 §3; 1985 c.513 §1; 1987 c.662 §3]

87.027 Right of owner to demand list of services, materials, equipment and labor; penalty for failure to provide list. An owner who receives a notice of right to a lien in accordance with the provisions of ORS 87.021 may demand, in writing, from the person providing materials, equipment, services or labor a list of materials or equipment or description of labor or services supplied or a statement of the contractual basis for supplying the materials, equipment, services or labor, including the percentage of the contract completed, and the charge therefor to the date of the demand. The supplier's statement shall be delivered to the owner within 15 days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, of receipt of the owner's written demand, as evidenced by a receipt or a receipt of delivery of a certified or registered letter containing the demand. Failure of the supplier to furnish the information requested constitutes a loss of attorney fees and costs

otherwise allowable in a suit to foreclose a lien. [1981 c.757 §8; 1985 c.513 §2; 1987 c.662 §4]

87.030 Effect of owner's knowledge of improvement; notice of nonresponsibility. (1) Every improvement except an improvement made by a person other than the landowner in drilling or boring for oil or gas, constructed upon lands with the knowledge of the owner shall be deemed constructed at the instance of the owner, and the interest owned shall be subject to any lien perfected pursuant to the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, unless the owner shall, within three days after the owner obtains knowledge of the construction, give notice that the owner will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the land or the improvement situated thereon.

(2) Subsection (1) of this section does not apply to a lien prohibited under ORS 87.037. [Amended by 1975 c.466 §9; 1987 c.662 §5; 2007 c.648 §9]

87.035 Perfecting lien; filing claim of lien; contents of claim. (1) Every person claiming a lien created under ORS 87.010 (1) or (2) shall perfect the lien not later than 75 days after the person has ceased to provide labor, rent equipment or furnish materials or 75 days after completion of construction, whichever is earlier. Every other person claiming a lien created under ORS 87.010 shall perfect the lien not later than 75 days after the completion of construction. All liens claimed shall be perfected as provided by subsections (2) to (4) of this section.

(2) A lien created under ORS 87.010 shall be perfected by filing a claim of lien with the recording officer of the county or counties in which the improvement, or some part thereof, is situated.

(3) A claim of lien shall contain:

(a) A true statement of demand, after deducting all just credits and offsets;

(b) The name of the owner, or reputed owner, if known;

(c) The name of the person by whom the claimant was employed or to whom the claimant furnished the materials or rented the equipment or by whom contributions are owed; and

(d) A description of the property to be charged with the lien sufficient for identification, including the address if known.

(4) The claim of lien shall be verified by the oath of the person filing or of some other person having knowledge of the facts, subject to the criminal penalties for false swearing provided under ORS 162.075. [Amended by 1961 c.609 §1; 1973 c.671 §3;

1975 c.466 §10; 1983 c.517 §1; 1985 c.596 §1; 1987 c.662 §6]

87.036 Subcontractor's perfection of claim of lien; notice; fee; rules. (1) A subcontractor or a person that provides labor, materials or equipment for a project to renovate, remodel, repair or otherwise alter an existing owner-occupied residence may not perfect a claim of lien against the owner's property under ORS 87.035 if the subcontractor or the person provided or contracted to provide services, labor, materials or equipment to a contractor that was unlicensed at the earlier of the following times:

(a) The time the subcontractor or the person first contracted with the contractor for the project; or

(b) The time the person first delivered labor, materials or equipment to the project site.

(2) Subsection (1) of this section does not apply if the services, labor, materials or equipment is purchased with cash or consumer credit.

(3) The Construction Contractors Board may notify a person at the person's request of the status of a contractor's license using any means the board uses to notify a contractor of the contractor's license status. The board may charge the person a fee in an amount the board specifies by rule for the cost of providing the notice to the person. [2010 c.77 §3]

87.037 Prohibition against claim of lien. An original contractor may not claim a lien arising from the improvement of real property if a written contract for the work is required by ORS 701.305 and the contractor does not have a written contract. [2007 c.648 §5]

Note: 87.037 was added to and made a part of 87.001 to 87.060 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

87.039 Notice of filing claim of lien; effect of failure to give notice. (1) A person filing a claim of lien pursuant to ORS 87.035 shall mail to the owner and to the mortgagee a notice in writing that the claim has been filed. A copy of the claim of lien shall be attached to the notice. The notice shall be mailed not later than 20 days after the date of filing. Notice mailed to the owner who received the notice of right to a lien as provided by ORS 87.021 shall be deemed in compliance with the requirement of this subsection, unless the person giving notice has actual knowledge of changed ownership. Notice mailed by any person to the mortgagee who received the notice required under ORS 87.025 shall be deemed in compliance with this

subsection unless the person giving the notice has actual knowledge of a change of mortgagee.

(2) No costs, disbursements or attorney fees otherwise allowable as provided by ORS 87.060 shall be allowed to any party failing to comply with subsection (1) of this section. [1975 c.466 §14; 1983 c.674 §4; 1985 c.513 §3; 1987 c.662 §7]

87.045 Completion date of improvement; notice of completion, abandonment or nonabandonment; contents of notice.

(1) The completion of construction of an improvement shall occur when:

- (a) The improvement is substantially complete;
- (b) A completion notice is posted and recorded as provided by subsections (2) and (3) of this section; or
- (c) The improvement is abandoned as provided by subsection (5) of this section.

(2) When all original contractors employed on the construction of an improvement have substantially performed their contracts, any original contractor, the owner or mortgagee, or an agent of any of them may post and record a completion notice. The completion notice shall state in substance the following:

Notice hereby is given that the building, structure or other improvement on the following described premises, (insert the legal description of the property including the street address, if known) has been completed.

All persons claiming a lien upon the same under the Construction Lien Law hereby are notified to file a claim of lien as required by ORS 87.035.

Dated _____, 2__

Original Contractor, Owner or Mortgagee
P. O. Address: _____

(3) Any notice provided for in this section shall be posted on the date it bears in some conspicuous place upon the land or upon the improvement situated thereon. Within five days from the date of posting the notice, the party posting it or the agent of the party shall record with the recording officer of the county in which the property, or some part thereof, is situated, a copy of the notice, together with an affidavit indorsed thereon or attached thereto, made by the person posting the notice, stating the date, place and manner of posting the notice. The recording officer shall indorse upon the notice the date of the filing thereof and record

and index the notice in the statutory lien record as required by ORS 87.050.

(4) Anyone claiming a lien created under ORS 87.010 on the premises described in a completion or abandonment notice for labor or services performed and materials or equipment used prior to the date of the notice shall perfect the lien pursuant to ORS 87.035.

(5) Except as provided in subsection (6) of this section, an improvement is abandoned:

- (a) On the 75th day after work on the construction of the improvement ceases; or
- (b) When the owner or mortgagee of the improvement or an agent of either posts and records an abandonment notice in writing signed by either the owner or the mortgagee.

(6) When work on the construction of an improvement ceases, if the owner or mortgagee of the improvement intends to resume construction and does not want abandonment to occur, the owner or mortgagee or an agent of either shall post and record a nonabandonment notice in writing signed by either the owner or mortgagee. The notice of nonabandonment shall be posted and recorded not later than the 74th day after work on the construction ceases. The notice of nonabandonment may be renewed at intervals of 150 days by rerecording the notice.

(7) The notices of abandonment or nonabandonment described in subsections (5) and (6) of this section shall state in substance:

- (a) That the improvement is either abandoned or not abandoned.
- (b) The legal description of the property, including the street address if known, on which the improvement is located.
- (c) In the case of an abandonment notice, that all persons claiming a lien on the improvement should file a claim of lien pursuant to ORS 87.035.
- (d) In the case of a nonabandonment notice, the reasons for the delay in construction.
- (e) The date of the notice.
- (f) The address of the person who signs the notice.

[Amended by 1975 c.466 §11; 1985 c.596 §2; 1987 c.662 §8; 2001 c.577 §6; 2005 c.22 §53]

87.050 Recording. The recording officer of each county shall record all notices and claims of lien required to be filed by the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093 in the statutory lien record. The notices and claims recorded in the statutory lien record shall be indexed as deeds and other conveyances are required by law to be indexed and shall constitute a public record of the county. [Amended by 1975 c.466 §12; 1987 c.662 §9; 2001 c.577 §2]

87.055 Duration of lien; when suit to enforce lien commences. No lien created under ORS 87.010 shall bind any improvement for a longer period than 120 days after the claim of lien is filed unless suit is brought in a proper court within that time to enforce the lien, or if extended payment is provided and the terms thereof are stated in the claim of lien, then 120 days after the expiration of such extended payment, but no lien shall be continued in force for a longer time than two years from the time the claim of lien is filed under ORS 87.035 by any agreement to extend payment. For purposes of this section:

(1) Subject to subsection (2) of this section, a suit to enforce the lien shall be deemed commenced as provided in ORS 12.020.

(2) With regard to other parties who are construction lien claimants under ORS 87.035, a suit to enforce the lien shall be deemed to commence when the complaint is filed, whether or not summons or service with regard to such parties is completed within the time required by ORS 12.020. [Amended by 1975 c.466 §13; 1985 c.341 §1; 1985 c.513 §4; 1987 c.662 §10]

87.057 Notice of intent to foreclose; list of materials furnished and statement of prices; effect of failure to give notice. (1) A person intending to foreclose a lien shall deliver to the owner of the property upon which the lien is claimed and to the mortgagee a notice in writing not later than 10 days prior to commencement of the suit stating that such person, or others, intends to commence suit to foreclose the lien. Notice delivered to the mortgagee who received the notice required by ORS 87.025 shall be deemed in compliance with this subsection, unless the person giving notice has actual knowledge of a change of mortgagee.

(2) Where a notice of intent to foreclose a lien has been given as provided by subsection (1) of this section, the sender of the notice upon demand of the owner shall furnish to the owner within five days after the demand a list of the materials and supplies with the charge therefor, or a statement of a contractual basis for the owner's obligation, for which a claim will be made in the suit to foreclose.

(3) A plaintiff or cross-complainant seeking to foreclose a lien in a suit to foreclose shall plead and prove compliance with subsections (1) and (2) of this section. No costs, disbursements or attorney fees otherwise allowable as provided by ORS 87.060 shall be allowed to any party failing to comply with the provisions of this section. [1975 c.466 §15; 1987 c.662 §11]

87.058 [1981 c.618 §16; 1987 c.662 §12; 1991 c.181 §15; 2001 c.197 §8; 2007 c.793 §2; repealed by 2011 c.630 §53]

87.059 Stay in proceedings to enforce lien; requirements; procedure; dissolution of stay. (1) As used in this section:

(a) Notwithstanding ORS 87.005, "contractor" has the meaning given that term in ORS 701.005.

(b) "Board" means the Construction Contractors Board established in ORS 701.205.

(2) If a person files a suit to enforce a lien perfected under ORS 87.035 and the owner of the structure subject to that lien files a complaint that is being processed by the board under ORS 701.145 against a contractor who performed work on the structure, the owner may obtain a stay of proceedings on the suit to enforce the lien if:

(a) The owner already has paid the contractor for that contractor's work that is subject to this chapter on the structure;

(b) The person suing to enforce the lien perfected under ORS 87.035:

(A) Performed work that is subject to ORS chapter 701 on the structure for the contractor who has been paid by the owner;

(B) Furnished labor, services or materials or rented or supplied equipment used on the structure to the contractor who has been paid by the owner; or

(C) Otherwise acquired the lien as a result of a contribution toward completion of the structure for which the contractor has been paid by the owner; and

(c) The continued existence of the lien on which the suit is pending is attributable to the failure of the contractor who has been paid by the owner to pay the person suing for that person's contribution toward completion of the structure.

(3) The owner may petition for the stay of proceedings described in subsection (2) of this section by filing the following papers in the circuit court in which the suit on the lien is pending:

(a) A certified copy of the complaint filed for processing by the board under ORS 701.145; and

(b) An affidavit signed by the owner that contains:

(A) A description of the structure;

(B) The street address of the structure;

(C) A statement that the structure is the structure upon which the suit to enforce the lien is pending; and

(D) A statement that the petitioner is the owner of the structure.

(4) Upon receipt of a complete petition described in subsection (3) of this section, the circuit court shall stay proceedings on the suit to enforce the lien.

(5) After the board order on the complaint becomes final and the board issues any required notice for

payment against the contractor's bond or deposit, the circuit court shall dissolve the stay ordered under subsection (4) of this section. [2011 c.630 §56]

87.060 Foreclosure; right to jury trial; distribution of proceeds of foreclosure sale. (1) A suit to enforce a lien perfected under ORS 87.035 shall be brought in circuit court, and the pleadings, process, practice and other proceedings shall be the same as in other cases.

(2) In a suit to enforce a lien perfected under ORS 87.035, evidence of the actual costs of the labor, equipment, services and material provided by the lien claimant establishes a rebuttable presumption that those costs are the reasonable value of that labor, equipment, services and material.

(3) In a suit to enforce a lien perfected under ORS 87.035, the court shall allow or disallow the lien. If the lien is allowed, the court shall proceed with the foreclosure of the lien and resolve all other pleaded issues. If the lien is disallowed, and a party has made a demand for a jury trial as provided for in subsection (4) of this section, the court shall impanel a jury to decide any issues triable of right by a jury. All other issues in the suit shall be tried by the court.

(4) A party may demand a trial by jury of any issue triable of right by a jury after the lien is disallowed, if that party serves a demand therefor in writing upon the other parties at any time prior to commencement of the trial to foreclose the lien. The demand shall be filed with the court. The failure of a party to serve a demand as required by this subsection shall constitute a waiver by the party of trial by jury. A demand for trial by jury made as provided in this subsection may not be withdrawn without the consent of the parties.

(5) When notice of intent to foreclose the lien has been given, pleaded and proven as provided for in ORS 87.057, the court, upon entering judgment for the lien claimant, shall allow as part of the costs all moneys paid for the filing or recording of the lien and all moneys paid for title reports required for preparing and foreclosing the lien. In a suit to enforce a lien perfected under ORS 87.035 the court shall allow a reasonable amount as attorney fees at trial and on appeal to the party who prevails on the issues of the validity and foreclosure of the lien.

(6) In case the proceeds of any sale under ORS 87.001 to 87.060 and 87.075 to 87.093 are insufficient to pay all lienholders claiming under such statutes, the liens of all persons shall be paid pro rata. Each claimant is entitled to execution for any balance due the claimant after the distribution of the proceeds, and that execution shall be issued by the clerk of the court, upon demand, after the return of the sheriff or other officer making the sale showing the balance due.

(7) All suits to enforce any lien perfected under ORS 87.035 shall have preference on the calendar of the court over every civil suit, except suits to which the state is a party, and shall be tried by the court without unnecessary delay. In such a suit, all persons personally liable, and all lienholders whose claims have been filed for record pursuant to ORS 87.035, shall, and all other persons interested in the matter in controversy, or in the property sought to be charged with the lien, may be made parties; but persons not made parties are not bound by the proceedings. The proceedings upon the foreclosure of the liens perfected under ORS 87.035 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property. [Amended by 1975 c.466 §16; 1981 c.897 §20; 1981 c.898 §44; 1983 c.517 §2; 1987 c.662 §13]

87.070 Amount of recovery by contractor; respective rights of contractor and owner. Any contractor may recover, upon a lien perfected by the contractor, only the amount due to the contractor according to the terms of the contract, after deducting all claims of other parties for work done and materials furnished for which a lien is perfected under ORS 87.035. Where a claim of lien is filed pursuant to ORS 87.035 for work done or material or equipment furnished to any contractor, the contractor shall defend any action brought thereupon at the expense of the contractor, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such claim of lien is filed. In case of judgment against the owner or the property of the owner upon the lien, the owner may deduct from any amount due or to become due by the owner to the contractor the amount of such judgment and costs; and if the amount of the judgment and costs exceeds the amount due by the owner to the contractor, or if the owner has settled with the contractors in full, the owner may recover back from the contractor any amount so paid in excess of the contract price, and for which the contractor was originally the party liable. [Amended by 1987 c.662 §14]

87.075 Exemption of building materials from attachment by third persons. When a person furnishes or procures materials for use in the construction of an improvement, those materials are not subject to attachment, execution or other legal process to enforce any debt due by the purchaser of the materials, except a debt due for the purchase money thereof, so long as in good faith the materials are about to be applied to the construction of the improvement. [Amended by 1975 c.466 §23]

87.076 Bond or deposit of money; amount; demand for release of lien; effect. (1) The owner of an improvement or land against which a lien perfected under ORS 87.035 is claimed, or an interested person, may file with the recording officer of the county in whose office the claim of lien is filed a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the principal or principals on the bond shall pay the amount of the claim and all costs and attorney fees that are awarded against the improvement or land on account of the lien. The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, the owner of an improvement or land against which a lien perfected under ORS 87.035 is claimed, or an interested person, may deposit with the treasurer of the county in which the claim of lien is filed a sum of money or the equivalent of money equal in value to 150 percent of the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

(b) A person who makes a deposit under paragraph (a) of this subsection is entitled to any investment income. The treasurer shall pay the investment income to the person who makes the deposit at the time the treasurer, in accordance with ORS 87.083, distributes the money deposited under this subsection. The person who makes the deposit bears the risk for a loss that results from an investment of the money deposited.

(3) A person may file a bond or deposit money under subsection (1) or (2) of this section at any time after the claim of lien is filed under ORS 87.035.

(4)(a) A person entitled to post a bond under subsection (1) of this section or a cash deposit under subsection (2) of this section may deliver pursuant to ORS 87.018 a written demand to the lien claimant that a lien perfected under ORS 87.035 be released and a notice that if the lien is not released the person may recover the actual costs the person incurred in complying with this section and ORS 87.078 and 87.081 or the sum of \$500, whichever is greater. If the lien is not released within 10 days after the demand and notice is delivered and the lien claimant or an assignor of the lien claimant does not bring a suit to foreclose the lien within the time provided in ORS 87.055, and if the person who made the demand has complied with this section and ORS 87.078 and 87.081, then the lien claimant or assignor of the lien claimant who fails to release or foreclose the lien is liable to the person for the actual costs the person incurred in complying with this section and ORS 87.078 and 87.081 or the sum of \$500, whichever is greater, in addition to any other remedy provided by law or equity.

(b) In an action to recover damages under this subsection in which the plaintiff prevails, the court, at trial and on appeal, shall allow and fix a reasonable amount for attorney fees for prosecution of the action, if the court finds that a written demand for payment of the claim was made on the defendant not less than 20 days before commencement of the action. However, the court may not allow attorney fees to the plaintiff, but shall allow attorney fees to the defendant, if the court finds that the defendant tendered to the plaintiff prior to commencement of the action an amount not less than the damages awarded to the plaintiff.

(c) If a lien claimant or an assignor of the lien claimant is served with a demand under paragraph (a) of this subsection and is a prevailing party in the suit to foreclose the lien, then in addition to other costs and attorney fees to which the lien claimant or the assignor of the lien claimant is entitled, the court shall allow the actual costs incurred in addressing the demand or the sum of \$500, whichever is greater. [1975 c.466 §17; 1983 c.513 §3; 1987 c.662 §15; 1999 c.845 §1; 2009 c.513 §1]

87.078 Notice of filing bond or depositing money; contents of notice; effect of failure to give notice. (1) A person who files a bond or deposits money under ORS 87.076 shall cause to be served upon the lien claimant a notice of the filing or deposit and, if a bond, a copy thereof, not later than 20 days after the filing or deposit. The notice shall state the location and time of the filing or deposit.

(2) If a person does not notify the lien claimant as required by subsection (1) of this section, the filing of the bond or the deposit of money is of no effect and the provisions of ORS 87.083 shall not apply in a suit to foreclose the lien for which the filing or deposit is made. [1975 c.466 §18]

87.081 Filing affidavit with county officer. (1) When a person files a bond with the recording officer of the county under ORS 87.076 and serves notice of the filing upon the lien claimant, the person shall file with the same recording officer an affidavit stating that such notice was served.

(2) When a person deposits money with the treasurer of a county under ORS 87.076 and serves notice of the deposit upon the lien claimant, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made and notice was served. [1975 c.466 §19; 2005 c.22 §54]

87.083 Foreclosure after filing of bond or deposit of money; effect of filing or deposit; disposition of bond or money. (1) A suit to foreclose a lien pursuant to ORS 87.060 that is commenced or pending after a bond is filed or money deposited under ORS 87.076 shall proceed as if no filing or deposit was made except that the lien shall attach to the bond or money upon the filing or deposit and the service of notice thereof upon the lien claimant. The property described in the claim of lien is thereafter entirely free of the lien and is not involved in subsequent proceedings.

(2) The county or an officer or employee of the county may not be named or otherwise made a party to a suit described in subsection (1) of this section.

(3) When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court allows the lien, the lien must be satisfied out of the bond or money. The court shall include as part of the court's judgment an order that specifies the amount the treasurer must release to the judgment creditor and the amount of the remaining balance that the treasurer must release to the person who deposited the money.

(4) When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court disallows the lien, the court shall include as part of the court's judgment an order to return the bond or money to the person who filed the bond or deposited the money.

(5) Notwithstanding an order from the court under subsection (3) or (4) of this section or an order or notice under ORS 87.088, if the county treasurer is not certain about how to distribute money deposited under ORS 87.076, the treasurer shall notify the lien claimant and the person who deposited the money of how the treasurer intends to distribute the money. If within 10 days after the date of the treasurer's notice a party to the suit to foreclose the lien objects to the notice, the treasurer may:

(a) Hold the money until the court or a stipulation of the parties provides further direction; or

(b) Commence an interpleader proceeding under ORCP 31. [1975 c.466 §20; 1987 c.662 §16; 2005 c.22 §55; 2009 c.513 §2]

87.086 Determination of adequacy of bond. If a lien claimant considers the bond filed with a recording officer of a county inadequate to protect the claim of the lien claimant for some reason other than the amount of the bond, the lien claimant shall, within 10 days of receipt of the notice of filing, petition the court in which the suit to foreclose the lien may be brought for a determination of the adequacy of the bond. The lien claimant shall state in detail the reasons for the

inadequacy. Not later than two days after the filing of the petition with the court, the lien claimant shall send a notice of the filing and a copy of the petition by registered or certified mail to the person who filed the bond. After a hearing, if the court determines that the bond is inadequate for one or more of the reasons stated by the lien claimant, the court shall order such action as shall make the bond adequate to protect the claim of lien. [1975 c.466 §21; 1987 c.662 §17]

87.088 Release of lien or return of money. The county recording officer shall record a written release of the lien or the county treasurer in whose office money is deposited under ORS 87.076 shall return the money to the person who made the deposit if:

(1) The person who filed the bond or deposited the money under ORS 87.076 notifies the lien claimant and the treasurer in writing and by certified mail that a suit to foreclose the lien was not commenced within the time specified by ORS 87.055. The notice shall provide that the lien claimant has 15 calendar days in which to object to the release of the lien and the return of the money and to provide documentation that demonstrates that a suit was timely commenced or that the time for commencement has not expired. If the treasurer receives an objection, the treasurer may decide how to distribute the money or may commence an interpleader proceeding under ORCP 31.

(2) The person who filed the bond or deposited the money presents a certified copy of a court's order for the release of the bond or all or some of the money to the person.

(3) The person who filed the bond or deposited the money presents a written release of lien signed by the lien claimant. [1975 c.466 §22; 1999 c.654 §5; 2009 c.513 §3]

87.089 Limitations on actions. The provisions of ORS 87.076, 87.083 and 87.088 do not create a cause of action and may not be asserted as a basis for a per se negligence action. [2009 c.513 §5]

87.091 [2003 c.778 §9; repealed by 2010 c.77 §9]

87.093 Information Notice to Owner; rules; contents; when notice must be delivered; effect of failure to deliver notice; penalty. (1) The Construction Contractors Board shall adopt by rule a form entitled "Information Notice to Owner" which shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meanings, the pertinent provisions of the Construction Lien Law of this state and the rights and responsibilities of an owner of property and an original

contractor under that law. The “Information Notice to Owner” shall include signature lines for the contractor and the property owner. The rights and responsibilities described in the form shall include, but not be limited to:

(a) Methods by which an owner may avoid multiple payments for the same materials and labor;

(b) The right to file a complaint against a licensed contractor with the board and, if appropriate, to be reimbursed from the contractor’s bond filed under ORS chapter 701; and

(c) The right to receive, upon written request therefor, a statement of the reasonable value of materials, equipment, services or labor provided from the persons providing the materials, equipment, services or labor at the request of an original contractor and who have also provided notices of right to a lien.

(2) Each original contractor shall deliver a copy of the “Information Notice to Owner” adopted by the board under this section to:

(a) The first purchaser of residential property constructed by the contractor and sold before or within the 75-day period immediately following the completion of construction; and

(b) The owner or an agent of the owner, other than an original contractor, at the time of signing a residential construction or improvement contract with the owner.

(3) The contractor shall deliver the “Information Notice to Owner” personally, by registered or certified mail or by first class mail with certificate of mailing.

(4) This section applies only to a residential construction or improvement contract for which the aggregate contract price exceeds \$2,000. If the price of a residential construction or improvement contract was initially less than \$2,000, but during the course of the performance of the contract exceeds that amount, the original contractor shall mail or otherwise deliver the “Information Notice to Owner” not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000.

(5) Notwithstanding subsections (2) and (4) of this section, the original contractor need not send the owner an “Information Notice to Owner” if the owner is a contractor licensed with the board under ORS chapter 701.

(6) Notwithstanding ORS 87.010 and 87.030, if an original contractor does not deliver an owner or agent with an “Information Notice to Owner” as required under subsections (2) to (4) of this section, the original contractor may not claim any lien created under ORS 87.010 upon any improvement, lot or parcel of land of the owner for labor, services or materials supplied under the residential construction or improvement

contract for which the original contractor failed to deliver the required “Information Notice to Owner”.

(7) If an original contractor does not deliver an “Information Notice to Owner” to an owner or agent as required under subsection (2) of this section, the board may suspend the license of the original contractor for any period of time that the board considers appropriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided in ORS 701.992.

(8) As used in this section:

(a) “Residential construction or improvement” means the original construction of residential property and the repair, replacement, remodeling, alteration or improvement of residential property.

(b) “Residential construction or improvement contract” means a written agreement between an original contractor and an owner for the performance of a residential construction or improvement and all labor, services and materials furnished and performed under the agreement.

(c) “Residential property” includes, but is not limited to, a residential dwelling and the driveways, swimming pools, terraces, patios, fences, porches, garages, basements, other structures and land that are adjacent or appurtenant to a residential dwelling. [1981 c.757 §9; 1983 c.757 §3; 1985 c.596 §3; 1987 c.662 §18; 1991 c.67 §14; 1995 c.771 §7; 1999 c.402 §1; 2007 c.648 §16; 2007 c.793 §3; 2009 c.408 §1]

Chapter 279C: Public Contracting – Public Improvements and Related Contracts

279C.005 Definitions. ORS 279A.010 (1) contains general definitions applicable throughout this chapter. [2003 c.794 §88]

279C.010 Applicability. Except as provided in ORS 279C.320, public contracting under this chapter is subject to ORS chapter 279A, but not ORS chapter 279B. [2003 c.794 §88a; 2005 c.103 §9]

279C.365 Requirements for solicitation documents and bids and proposals. (1) A contracting agency that prepares solicitation documents for a public improvement contract shall, at a minimum, include in the solicitation documents:

(a) A designation for or description of the public improvement project;

(b) The office where the specifications for the project may be reviewed;

(c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The date and time after which bids will not be received, which must be at least five days after the date

of the last publication of the advertisement, and may, in the sole discretion of the contracting agency, direct or permit bidders to submit and the contracting agency to receive bids by electronic means;

(e) The name and title of the person designated to receive bids;

(f) The date on which and the time and place at which the contracting agency will publicly open the bids;

(g) A statement that, if the contract is for a public works project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, the contracting agency will not receive or consider a bid unless the bid contains a statement by the bidder that the bidder will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.;

(h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;

(i) A statement that the contracting agency may reject a bid that does not comply with prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375 (3)(b), and that the contracting agency may reject for good cause all bids after finding that doing so is in the public interest;

(j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) A statement that the contracting agency may not receive or consider a bid for a public improvement contract unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board.

(2) A contracting agency may provide solicitation documents by electronic means.

(3) A bid made to the contracting agency under ORS 279C.335 or 279C.400 must be:

(a) In writing;

(b) Filed with the person the contracting agency designates to receive bids; and

(c) Opened publicly by the contracting agency immediately after the deadline for submitting bids.

(4) After the contracting agency opens the bids, the contracting agency shall make the bids available for public inspection.

(5) A bidder shall submit or post a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check for all bids as bid security unless the contracting agency has exempted the contract for which the bidder submits a bid from this requirement

under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the contract.

(6) Subsection (5) of this section applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways, bridges and other transportation projects, more than \$50,000. [2003 c.794 §115; 2005 c.103 §15; 2007 c.764 §25; 2007 c.844 §2; 2009 c.368 §1]

279C.370 First-tier subcontractor disclosure.

(1)(a) Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract, a bidder shall submit to the contracting agency a disclosure of the first-tier subcontractors that:

(A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and

(B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000.

(d) This subsection does not apply to public improvement contracts that have been exempted from competitive bidding requirements under ORS 279C.335 (2).

(2) The disclosure of first-tier subcontractors under subsection (1) of this section must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following form:

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: _____

BID #: _____

BID CLOSING: Date: _____ Time: _____

This form must be submitted at the location specified

in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE OF WORK
1) _____ _____	\$ _____ _____
2) _____ _____	\$ _____ _____
3) _____ _____	\$ _____ _____
4) _____ _____	\$ _____ _____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name): _____

Contact name: _____

Phone no.: _____

(3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a nonresponsive bid and may not award the contract to the contractor. A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.

(5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

(6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section. [2003 c.794 §116; 2005 c.103 §16]

279C.375 Award and execution of contract; determination of responsibility of bidder; bonds; impermissible exclusions.

(1) After a contracting agency has opened bids and determined that the contracting agency will award a public improvement contract, the contracting agency shall award the contract to the lowest responsible bidder.

(2) At least seven days before awarding a public improvement contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the contracting agency's intent to award a contract. This subsection does not apply to a contract to which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

(b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the contracting agency that the bidder:

(A) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(B) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.

(C) Is covered by liability insurance and other insurance in amounts the contracting agency requires in the solicitation documents.

(D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

(E) Has made the disclosure required under ORS 279C.370.

(F) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's control, the bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency shall document the bidder's record of performance if the contracting agency finds under this subparagraph that the bidder is not responsible.

(G) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's performance of a contract or subcontract. The contracting agency shall document the bidder's record of integrity if the contracting agency finds under this subparagraph that the bidder is not responsible.

(H) Is legally qualified to contract with the contracting agency.

(I) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's responsibility based on available information, or may find that the bidder is not responsible.

(c) Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection in substantially the following form:

RESPONSIBILITY DETERMINATION FORM

Project Name: _____
 Bid Number: _____
 Business Entity Name: _____
 CCB License Number: _____
 Form Submitted By (Contracting Agency): _____
 Form Submitted By (Contracting Agency Representative's Name): _____
 Title: _____
 Date: _____

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):
 Checked the list created by the Construction Contractors Board under ORS 701.227 for

bidders who are not qualified to hold a public improvement contract.

- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has found that the bidder demonstrated that the bidder:
 - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
 - Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.
 - Is covered by liability insurance and other insurance in amounts required in the solicitation documents.
 - Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
 - Has disclosed the bidder's first-tier subcontractors in accordance with ORS 279C.370.
 - Has a satisfactory record of performance.
 - Has a satisfactory record of integrity.
 - Is legally qualified to contract with the contracting agency.
 - Has supplied all necessary information in connection with the inquiry concerning responsibility.
- Determined the bidder to be (check one of the following):
 - Responsible under ORS 279C.375 (3)(a) and (b).
 - Not responsible under ORS 279C.375 (3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

- (a) Promptly execute a formal contract; and
- (b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

(5) Based on competitive bids, a contracting agency may award a public improvement contract or may award multiple public improvement contracts when specified in the invitation to bid.

(6) A contracting agency may not exclude a commercial contractor from competing for a public contract on the basis that the license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license. As used in this section, "commercial contractor" has the meaning given that term in ORS 701.005. [2003 c.794 §117; 2005 c.103 §§17,18; 2005 c.376 §1; 2007 c.764 §§26,27; 2007 c.836 §§42,43; 2009 c.880 §§9,9a]

279C.580 Contractor's relations with

subcontractors. (1) A contractor may not request payment from the contracting agency of any amount withheld or retained in accordance with subsection (5) of this section until such time as the contractor has determined and certified to the contracting agency that the subcontractor has determined and certified to the contracting agency that the subcontractor is entitled to the payment of such amount.

(2) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section does not constitute a dispute to which the contracting agency is a party. The contracting agency may not be included as a party in any administrative or judicial proceeding involving such a dispute.

(3) Each public improvement contract awarded by a contracting agency shall include a clause that requires the contractor to include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the contracting agency under the contract; and

(b) An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive

payment from the contracting agency or contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) Computed at the rate specified in ORS 279C.515 (2).

(4) The contract awarded by the contracting agency shall require the contractor to include in each of the contractor's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (3) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(5)(a) The clauses required by subsections (3) and (4) of this section are not intended to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice conforming to the standards of subsection (8) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a contractor under sub-subparagraph (i) of this subparagraph has been furnished to the contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third-party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to the prime contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(6) If, after making application to a contracting agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, a contractor discovers that all or a portion of the payment otherwise due the subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(b) Furnish to the contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor under paragraph (a) of this subsection;

(c) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds therefor must be recovered from the contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers such funds from the contracting agency;

(f) Notify the contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates that such withholding began and ended; and

(g) Be obligated to pay to the contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279C.570 from the 11th day after receipt of the withheld amounts from the contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(7)(a) If a contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in such first-tier subcontractor's performance under the contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (6)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon making such determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified in ORS 279C.570.

(8) A written notice of any withholding shall be issued to a subcontractor, with a copy to the contracting agency of any such notice issued by a contractor, specifying:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(9) Except as provided in subsection (2) of this section, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient performance or nonperformance by a subcontractor.

(10) A contractor's obligation to pay a late payment interest penalty to a subcontractor under the clause included in a subcontract under subsection (3) or (4) of this section is not intended to be an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim may not include any amount

for reimbursement of such late payment interest penalty. [2003 c.794 §151; 2005 c.103 §34]

279C.585 Authority to substitute undisclosed first-tier subcontractor; circumstances; rules. A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid, is presented to the subcontractor by the contractor.

(2) When the disclosed subcontractor becomes bankrupt or insolvent.

(3) When the disclosed subcontractor fails or refuses to perform the subcontract.

(4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.

(5) When the contractor demonstrates to the contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

(6) When the disclosed subcontractor does not hold a license from, or has a license that is not properly endorsed by, the Construction Contractors Board and is required to be licensed by the board.

(7) When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the disclosed subcontractor is ineligible to work on a public improvement contract under applicable statutory provisions.

(9) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good cause" includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.

(10) When the substitution is reasonably based on the contract alternates chosen by the contracting agency. [2003 c.794 §152; 2007 c.836 §45]

Note: The amendments to 279C.585 by section 45, chapter 836, Oregon Laws 2007, become operative July 1, 2010. See section 70, chapter 836, Oregon Laws 2007. The text that is operative until July 1, 2010, is set forth for the user's convenience.

279C.585. A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid, is presented to the subcontractor by the contractor.

(2) When the disclosed subcontractor becomes bankrupt or insolvent.

(3) When the disclosed subcontractor fails or refuses to perform the subcontract.

(4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.

(5) When the contractor demonstrates to the contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

(6) When the disclosed subcontractor does not hold a license from the Construction Contractors Board and is required to be licensed by the board.

(7) When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the disclosed subcontractor is ineligible to work on a public improvement contract under applicable statutory provisions.

(9) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good cause" includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.

(10) When the substitution is reasonably based on the contract alternates chosen by the contracting agency.

279C.590 Complaint process for substitutions of subcontractors; civil penalties. (1)(a) A subcontractor disclosed under ORS 279C.370 may file a complaint based on the subcontractor disclosure requirements under ORS 279C.370 with the Construction Contractors Board about a contractor if the contractor has substituted another subcontractor for the complaining subcontractor.

(b) If more than one subcontractor files a complaint with the board under paragraph (a) of this subsection relating to a single subcontractor disclosure, the board shall consolidate the complaints into one proceeding. If the board imposes a civil penalty under this section against a contractor, the amount collected by the board shall be divided evenly among all of the complaining subcontractors.

(c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a deposit of \$500 with the board upon filing the complaint.

(d) If the board determines that a contractor's substitution was not in compliance with ORS 279C.585, the board shall return the full amount of the deposit posted under paragraph (c) of this subsection to the complaining subcontractor.

(e) If the board determines that a contractor has not substituted a subcontractor or that the contractor's substitution was in compliance with ORS 279C.585, the board shall award the contractor \$250 of the deposit and shall retain the other \$250, which may be expended by the board.

(2) Upon receipt of a complaint under subsection (1) of this section, the board shall investigate the complaint. If the board determines that a contractor has substituted a subcontractor in a manner not in compliance with ORS 279C.585, the board may impose a civil penalty against the contractor under subsections (3) to (5) of this section. Civil penalties under this section shall be imposed in the manner provided under ORS 183.745.

(3) If the board imposes a civil penalty under subsection (2) of this section and it is the first time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board shall:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to \$1,000. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(4) If the board imposes a civil penalty under subsection (2) of this section and it is the second time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on the list established under ORS 701.227 for up to six months. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(5) If the board imposes a civil penalty under subsection (2) of this section and the board has imposed a civil penalty under subsection (2) of this section against the contractor three or more times during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on the list established under ORS 701.227 for up to one year. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(6) Within 10 working days after receiving a complaint under subsection (1) of this section, the board shall notify, in writing, any contracting agency that is a party to the contract for which the complaint has been filed that the complaint has been filed. [2003 c.794 §153]

(Action on Payment Bonds and Public Works Bonds)

279C.600 Right of action on payment bond or public works bond of contractor or subcontractor; notice of claim. (1) A person claiming to have supplied labor or materials for the performance of the work provided for in a public contract, including any person having a direct contractual relationship with the contractor furnishing the payment bond or a direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the

Unemployment Compensation Trust Fund or the Department of Revenue in connection with the performance of the contract, has a right of action on the contractor's payment bond as provided for in ORS 279C.380 and 279C.400 only if:

(a) The person or the assignee of the person has not been paid in full; and

(b) The person gives written notice of claim, as prescribed in ORS 279C.605, to the contractor and the contracting agency.

(2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has received information indicating that one or more workers providing labor on a public works have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action first on the contractor's public works bond required under ORS 279C.836 and then, for any amount of a claim not satisfied by the public works bond, on the contractor's payment bond, as provided in ORS 279C.380 and 279C.400. When an investigation indicates that a subcontractor's workers have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action first on the subcontractor's public works bond and then, for any amount of a claim not satisfied by the subcontractor's public works bond, on the contractor's payment bond. The commissioner's right of action exists without necessity of an assignment and extends to workers on the project who are not identified when the written notice of claim is given, but for whom the commissioner has received information indicating that the workers have provided labor on the public works and have not been paid in full. The commissioner shall give written notice of the claim, as prescribed in ORS 279C.605, to the contracting agency, the Construction Contractors Board, the contractor and, if applicable, the subcontractor. The commissioner may not make a claim for the same unpaid wages against more than one bond under this section. [2003 c.794 §154; 2005 c.360 §3]

279C.605 Notice of claim. (1) The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor or subcontractor at any place the contractor or subcontractor maintains an office or conducts business or at the residence of the contractor or subcontractor.

(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to a fund of

an employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials.

(3) The notice must be in writing substantially as follows:

To (here insert the name of the contractor or subcontractor and the name of the public body):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the contractor or subcontractor).

(here to be signed)

(4) When notice of claim is given by the commissioner and if the claim includes a worker who is then unidentified, the commissioner shall include in the notice a statement that the claim includes an unidentified worker for whom the commissioner has received information indicating that the worker has not been paid in full at the prevailing rate of wage required by ORS 279C.840 or overtime wages required by ORS 279C.540.

(5) The person making the claim or giving the notice shall sign the notice. [2003 c.794 §155; 2005 c.360 §4; 2009 c.160 §1]

279C.610 Action on contractor's public works bond or payment bond; time limitation. (1) The Commissioner of the Bureau of Labor and Industries or a person who has a right of action on the public works bond or the payment bond under ORS 279C.600 and, where required, who has filed and served the notice or notices of claim, as required under ORS 279C.600 and 279C.605, or that person's assignee, may institute an action on the contractor's public works bond or payment bond in a circuit court of this state or the federal district court of the district.

(2) The action shall be on the relation of the commissioner, the claimant, or that person's assignee, as the case may be, and shall be in the name of the contracting agency that let the contract or, when applicable, the public agency or agencies for whose benefit the contract was let. It may be prosecuted to final judgment and execution for the use and benefit of the commissioner or the claimant, or that person's assignee, as the fact may appear.

(3) The action shall be instituted no later than two years after the person last provided labor or materials or two years after the worker listed in the commissioner's notice of claim last provided labor. [2003 c.794 §156; 2005 c.360 §5]

PREVAILING WAGE RATE

279C.800 Definitions for ORS 279C.800 to 279C.870. As used in ORS 279C.800 to 279C.870:

(1) "Fringe benefits" means the amount of:

(a) The rate of contribution a contractor or subcontractor makes irrevocably to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing the following items, except for items that federal, state or local law requires the contractor or subcontractor to provide:

(A) Benefits to workers pursuant to an enforceable written commitment to the workers to carry out a financially responsible plan or program for:

- (i) Medical or hospital care;
- (ii) Pensions on retirement or death; or
- (iii) Compensation for injuries or illness that result from occupational activity;

(B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;

(C) Unemployment benefits;

(D) Life insurance;

(E) Disability and sickness insurance or accident insurance;

(F) Vacation and holiday pay;

(G) Costs of apprenticeship or other similar programs; or

(H) Other bona fide fringe benefits.

(2) "Housing" has the meaning given that term in ORS 456.055.

(3) "Locality" means the following district in which the public works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(4) "Prevailing rate of wage" means the rate of hourly wage, including all fringe benefits, that the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to the majority of workers employed on projects of a similar character in the same trade or occupation.

(5) "Public agency" means the State of Oregon or a political subdivision of the State of Oregon, or a county, city, district, authority, public corporation or public entity organized and existing under law or charter or an instrumentality of the county, city, district, authority, public corporation or public entity.

(6)(a) "Public works" includes, but is not limited to:

(A) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest;

(B) A project that uses funds of a private entity and \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a privately owned road, highway, building, structure or improvement of any type;

(C) A project that uses funds of a private entity for constructing a privately owned road, highway, building, structure or improvement of any type in which a public agency will use or occupy 25 percent or more of the square footage of the completed project; or

(D) Notwithstanding the provisions of ORS 279C.810 (2)(a), (b) and (c), a device, structure or mechanism, or a combination of devices, structures or mechanisms, that:

(i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures or buildings that a public body, as defined in ORS 174.109, owns.

(b) "Public works" does not include:

(A) The reconstruction or renovation of privately owned property that a public agency leases; or

(B) The renovation of publicly owned real property that is more than 75 years old by a private nonprofit entity if:

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 13, 2007. [2003 c.794 §165; 2007 c.764 §34; 2010 c.45 §1]

279C.805 Policy. The Legislative Assembly declares that the purposes of the prevailing rate of wage law are:

(1) To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community-established compensation standards.

(2) To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards.

(3) To encourage training and education of workers to industry skills standards.

(4) To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits. [2003 c.794 §166]

279C.807 Workforce diversity for public works projects. (1) The Bureau of Labor and Industries shall develop and adopt a plan to increase diversity statewide among workers employed on projects subject to ORS 279C.800 to 279C.870. The bureau shall develop the plan after conducting a statewide public process to solicit proposals to increase diversity and shall adopt the plan after considering proposals submitted to the bureau.

(2) The bureau shall report each year to the Legislative Assembly or to the appropriate legislative interim committee concerning progress that results from the plan adopted under this section and may submit recommendations for legislation or other measures that will improve diversity among workers employed on projects subject to ORS 279C.800 to

279C.870. The bureau shall submit the first report no later than January 1, 2009. [2007 c.844 §9]

Note: 279C.807 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279C or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

279C.808 Rules. In accordance with applicable provisions of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules necessary to administer ORS 279C.800 to 279C.870. [2007 c.764 §45]

279C.810 Exemptions; rules. (1) As used in this section:

(a) "Funds of a public agency" does not include:

(A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;

(B) Building and development permit fees paid or waived by the public agency;

(C) Tax credits or tax abatements;

(D) Land that a public agency sells to a private entity at fair market value;

(E) The difference between:

(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and

(ii) The fair market value of the land if the land is not subject to the limitations described in sub-subparagraph (i) of this subparagraph;

(F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;

(G) Staff resources of the public agency used to design or inspect one or more components of a project;

(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;

(I) Value added to land as a consequence of a public agency's site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or

(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.

(b) "Nonprofit organization" means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) ORS 279C.800 to 279C.870 do not apply to:

(a) Projects for which the contract price does not exceed \$50,000. In determining the price of a project, a public agency:

(A) May not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay; and

(B) Shall include the value of work performed by every person paid by a contractor or subcontractor in any manner for the person's work on the project.

(b) Projects for which no funds of a public agency are directly or indirectly used. In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules to carry out the provisions of this paragraph.

(c) Projects:

(A) That are privately owned;

(B) That use funds of a private entity;

(C) In which less than 25 percent of the square footage of a completed project will be occupied or used by a public agency; and

(D) For which less than \$750,000 of funds of a public agency are used.

(d) Projects for residential construction that are privately owned and that predominantly provide affordable housing. As used in this paragraph:

(A) "Affordable housing" means housing that serves occupants whose incomes are no greater than 60 percent of the area median income or, if the occupants are owners, whose incomes are no greater than 80 percent of the area median income.

(B) "Predominantly" means 60 percent or more.

(C) "Privately owned" includes:

(i) Affordable housing provided on real property owned by a public agency if the real property and related structures are leased to a private entity for 50 or more years; and

(ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability company in which a housing authority, as defined in ORS 456.005, is a general partner, director or managing member and the housing authority is not a majority owner in the partnership, nonprofit corporation or limited liability company.

(D) "Residential construction" includes the construction, reconstruction, major renovation or

painting of single-family houses or apartment buildings not more than four stories in height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks, pursuant to the United States Department of Labor's "All Agency Memorandum No. 130: Application of the Standard of Comparison "Projects of a Character Similar" Under Davis-Bacon and Related Acts," dated March 17, 1978. However, the commissioner may consider different definitions of residential construction in determining whether a project is a residential construction project for purposes of this paragraph, including definitions that:

(i) Exist in local ordinances or codes; or

(ii) Differ, in the prevailing practice of a particular trade or occupation, from the United States Department of Labor's description of residential construction. [2003 c.794 §172; 2005 c.153 §1; 2005 c.360 §8; 2007 c.764 §35]

279C.815 Determination of prevailing wage; sources of information; comparison of state and federal prevailing wage; other powers of commissioner.

(1) As used in this section, "person" means an employer, a labor organization or an official representative of an employee or employer association.

(2)(a) The Commissioner of the Bureau of Labor and Industries at least once each year shall determine the prevailing rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800 by means of an independent wage survey and shall make this information available at least twice each year. The commissioner may amend the rate at any time.

(b) If the data derived only from the survey described in paragraph (a) of this subsection appear to the commissioner to be insufficient to determine the prevailing rate of wage, the commissioner shall consider additional information such as collective bargaining agreements, other independent wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade or occupation is the prevailing rate. If the wage a contractor or subcontractor pays to workers on a public works is based on a period of time other than an hour, the hourly wage must be mathematically determined by the number of hours worked in that period of time.

(3) A person shall make reports and returns to the Bureau of Labor and Industries that the commissioner requires to determine the prevailing rates of wage, using forms the bureau provides and within the time the commissioner prescribes. The person or an

authorized representative of the person shall certify to the accuracy of the reports and returns.

(4) Notwithstanding ORS 192.410 to 192.505, reports and returns or other information provided to the commissioner under this section are confidential and not available for inspection by the public.

(5) The commissioner may enter into a contract with a public or private party to obtain data and information the commissioner needs to determine the prevailing rate of wage. The contract may provide for the manner and extent of the market review of affected trades and occupations and for other requirements regarding timelines of reports, accuracy of data and information and supervision and review as the commissioner prescribes. [2003 c.794 §173; 2005 c.360 §9; 2007 c.764 §36; 2007 c.844 §3; 2011 c.265 §1]

279C.817 Determination of applicability of prevailing wage rate; time limitation; hearing; rules.

(1) The Commissioner of the Bureau of Labor and Industries shall, upon the request of a public agency or other interested person, make a determination about whether a project or proposed project is or would be a public works on which payment of the prevailing rate of wage is or would be required under ORS 279C.840.

(2) The requester shall provide the commissioner with information necessary to enable the commissioner to make the determination.

(3) The commissioner shall make the determination within 60 days after receiving the request or 60 days after the requester has provided the commissioner with the information necessary to enable the commissioner to make the determination, whichever is later. The commissioner may take additional time to make the determination if the commissioner and the requester mutually agree that the commissioner may do so.

(4) The commissioner shall afford the requester or a person adversely affected or aggrieved by the commissioner's determination a hearing in accordance with ORS 183.413 to 183.470. An order the commissioner issues under ORS 183.413 to 183.470 is subject to judicial review as provided in ORS 183.482.

(5) The commissioner shall adopt rules establishing the process for requesting and making the determinations described in this section. [2007 c.764 §43]

279C.820 Advisory committee to assist commissioner. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee to assist the commissioner in the administration of ORS 279C.800 to 279C.870.

(2) The advisory committee must include equal representation of members from management and labor in the building and construction industry who perform work on public works contracts and such other interested parties as the commissioner shall appoint. [2003 c.794 §179]

279C.825 Fees; rules. (1)(a) The Commissioner of the Bureau of Labor and Industries, by order, shall establish a fee to be paid by the public agency that awards a public works contract subject to ORS 279C.800 to 279C.870. The commissioner shall use the fee to pay the costs of:

(A) Surveys to determine the prevailing rates of wage;

(B) Administering and providing investigations under and enforcement of ORS 279C.800 to 279C.870; and

(C) Providing educational programs on public contracting law under the Public Contracting Code.

(b) The commissioner shall establish the fee at 0.1 percent of the contract price. However, in no event may a fee be charged and collected that is less than \$250 or more than \$7,500.

(2) The commissioner shall pay moneys received under this section into the State Treasury. The moneys shall be credited to the Prevailing Wage Education and Enforcement Account created by ORS 651.185.

(3) The public agency shall pay the fee at the time the public agency notifies the commissioner under ORS 279C.835 a contract subject to the provisions of ORS 279C.800 to 279C.870 has been awarded. [2003 c.794 §178; 2007 c.844 §7; 2009 c.161 §1; 2009 c.788 §1]

279C.827 Division of public works project; applicability of prevailing wage rate to divided projects.

(1)(a) A public agency may not divide a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

(b) When the Commissioner of the Bureau of Labor and Industries determines that a public agency has divided a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order compelling compliance.

(c) In making determinations under this subsection, the commissioner shall consider:

(A) The physical separation of the project structures;

(B) The timing of the work on project phases or structures;

(C) The continuity of project contractors and subcontractors working on project parts or phases;

(D) The manner in which the public agency and the contractors administer and implement the project;

(E) Whether a single public works project includes several types of improvements or structures; and

(F) Whether the combined improvements or structures have an overall purpose or function.

(2) If a project is a public works of the type described in ORS 279C.800 (6)(a)(B) or (C), the commissioner shall divide the project, if appropriate, after applying the considerations set forth in subsection (1)(c) of this section to separate the parts of the project that include funds of a public agency or that will be occupied or used by a public agency from the parts of the project that do not include funds of a public agency and that will not be occupied or used by a public agency. If the commissioner divides the project, any part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency is not subject to ORS 279C.800 to 279C.870.

(3) If a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner shall divide the project, if appropriate, after applying the considerations set forth in subsections (1)(c) and (2) of this section to separate the parts of the project that are public works from the parts of the project that are not public works. If the commissioner divides the project, parts of the project that are not public works are not subject to ORS 279C.800 to 279C.870. [2007 c.764 §44]

279C.829 Agreement with other state to pay less than prevailing rate of wage. Notwithstanding any other provision of law, a contracting agency may not enter into an agreement with another state or a political subdivision or agency of another state in which the contracting agency agrees that a contractor or subcontractor may pay less than the prevailing rate of wage determined in accordance with ORS 279C.815 under the terms of a contract for public works to which the contracting agency is a party or of which the contracting agency is a beneficiary. [2009 c.322 §2]

279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; bond. (1)(a) Except as provided in paragraph (e) of this subsection, the specifications for every contract for public works must contain a provision that states the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that the contractor or subcontractor or other person who is a party to the contract uses in performing all or part of

the contract. If the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

(b) If a public agency under paragraph (a) of this subsection must include the state and federal prevailing rates of wage in the specifications, the public agency shall also require the contractor to pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works.

(c) Every contract and subcontract must provide that the workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

(d) If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, every contract and subcontract must provide that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage.

(e) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for a contract for the public works must include the applicable prevailing rate of wage.

(2) The specifications for a contract for public works must provide that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). Every contract that a contracting agency awards must require the contractor to:

(a) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

(b) Require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). [2003 c.794 §168; 2005 c.360 §10; 2007 c.415 §2; 2007 c.764 §37; 2007 c.844 §4; 2009 c.161 §2; 2011 c.265 §2]

279C.835 Notifying commissioner of public works contract subject to prevailing wage; payment of fee. Public agencies shall notify the Commissioner of the Bureau of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract subject to the provisions of ORS 279C.800 to 279C.870 has been awarded. The notification shall be made within 30 days of the date that the contract is awarded. The notification shall include payment of the fee required under ORS 279C.825 and a copy of the disclosure of first-tier subcontractors that was submitted under ORS 279C.370. [2003 c.794 §175; 2009 c.161 §3]

279C.836 Public works bond; rules. (1) Except as provided in subsection (4), (7), (8) or (9) of this section, before starting work on a contract or subcontract for a public works project, a contractor or subcontractor shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for work performed on contracts entered into before the cancellation.

(2) Before permitting a subcontractor to start work on a public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section, has elected not to file a public works bond under subsection (7) or (8) of this section or is exempt under subsection (4) or (9) of this section.

(3) A contractor or subcontractor is not required under this section to file a separate public works bond for each public works project for which the contractor or subcontractor has a contract.

(4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of wage on a public works project is not required to file a public works bond under this section.

(5) A public works bond required by this section is in addition to any other bond the contractor or subcontractor is required to obtain.

(6) The board may, by rule, require a contractor or subcontractor to obtain a new public works bond if a surety pays a claim out of an existing public works bond. The new bond must be in the amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the existing bond, notwithstanding payment by the surety on the claim.

(7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 may, for up to four years after certification, elect not to file a public works bond as required under subsection (1) this section. If a business enterprise elects not to file a public works bond, the business enterprise shall give the board written verification of the certification and written notice that the business enterprise elects not to file the bond.

(b) A business enterprise that elects not to file a public works bond under this subsection shall notify the public agency for whose benefit the contract was awarded or, if the business enterprise is a subcontractor, the contractor of the election before starting work on a public works project. When a business enterprise elects not to file a public works bond under this subsection, a claim for unpaid wages may be made against the payment bond of the business enterprise or, if the business enterprise is a subcontractor, the payment bond of the contractor.

(c) An election not to file a public works bond expires four years after the date the business enterprise is certified. After an election has expired and before starting or continuing work on a contract or subcontract for a public works project, the business enterprise shall file a public works bond with the board as required under subsection (1) of this section.

(8) A contractor or subcontractor may elect not to file a public works bond as required under subsection (1) of this section for any public works project for which the contract price does not exceed \$100,000.

(9) In cases of emergency, or when the interest or property of the public agency for whose benefit the contract was awarded probably would suffer material injury by delay or other cause, the requirement for filing a public works bond may be excused, if a declaration of the emergency is made in accordance with rules adopted under ORS 279A.065.

(10) The board shall make available on a searchable public website information concerning public works bonds filed with the board, claims made on those bonds, elections made by certified business enterprises not to file those bonds and the expiration

date of each election. The board may adopt rules necessary to perform the duties required of the board by this section.

(11) The Commissioner of the Bureau of Labor and Industries, with approval of the board, shall adopt rules that establish language for public works bonds. [2005 c.360 §2; 2007 c.415 §1; 2007 c.764 §38]

279C.838 Applicability of state and federal rates of wage; determination of site of project; determination of applicability of wage to transportation workers; waiver. When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.):

(1) If the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay at least the state prevailing rate of wage as determined under ORS 279C.815;

(2) The Commissioner of the Bureau of Labor and Industries shall determine the site of the project in a manner consistent with the term “site of the work” as that term is used in federal law and in regulations adopted or guidelines issued in accordance with the Davis-Bacon Act;

(3) The commissioner shall determine in a manner that is consistent with federal law and regulations adopted or guidelines issued in accordance with the Davis-Bacon Act whether workers transporting materials and supplies to and from the site of the project are subject to the Davis-Bacon Act and are entitled to be paid the prevailing rate of wage;

(4) Except as provided in subsection (1) of this section, the commissioner, in consultation with the advisory committee appointed under ORS 279C.820, may administer and enforce ORS 279C.800 to 279C.870 in a manner that is consistent with federal law and regulations adopted or guidelines issued in accordance with the Davis-Bacon Act. The commissioner may provide a waiver from a requirement set forth in ORS 279C.800 to 279C.870 if necessary to achieve consistency with the Davis-Bacon Act and to further the purposes of ORS 279C.805; and

(5) ORS 279C.800 to 279C.870 do not apply to workers enrolled in skill training programs that are certified by the United States Secretary of Transportation under the Federal-Aid Highway Act (23 U.S.C. 113(c)). [2005 c.360 §7; 2007 c.844 §5]

279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions.

(1) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in

the locality where the labor is performed. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279C.800 (1)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279C.800 (1)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage. The contractor or subcontractor shall pay all wages due and owing to the contractor’s or subcontractor’s workers upon public works on the regular payday established and maintained under ORS 652.120.

(2) After a contract for public works is executed with any contractor or work is commenced upon any public works, the amount of the prevailing rate of wage is not subject to attack in any legal proceeding by any contractor or subcontractor in connection with that contract.

(3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the amount required to be in the specifications of a contract for public works, or that there was an agreement between the employee and the employer to work at less than the wage rates required to be paid under this section.

(4) Every contractor or subcontractor engaged on a project for which there is a contract for a public works shall keep the prevailing rates of wage for that project posted in a conspicuous and accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries shall furnish without charge copies of the prevailing rates of wage to contractors and subcontractors.

(5) Every contractor or subcontractor engaged on a project for which there is a contract for a public works to which the prevailing wage requirements apply that also provides or contributes to a health and welfare plan or a pension plan, or both, for the contractor or subcontractor’s employees on the project shall post a notice describing the plan in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under subsection (4) of this section. In addition to the description of the plan, the notice shall contain information on how and where to make claims and where to obtain further information.

(6)(a) Except as provided in paragraph (c) of this subsection, no person other than the contractor or subcontractor may pay or contribute any portion of the prevailing rate of wage paid by the contractor or subcontractor to workers employed in the performance of a public works contract.

(b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage specified in the contract.

(c) This subsection is not intended to prohibit payments to a worker who is enrolled in any government-subsidized training or retraining program.

(7) A person may not take any action that circumvents the payment of the prevailing rate of wage to workers employed on a public works contract, including, but not limited to, reducing an employee's regular rate of pay on any project not subject to ORS 279C.800 to 279C.870 in a manner that has the effect of offsetting the prevailing rate of wage on a public works project. [2003 c.794 §167; 2009 c.161 §4]

279C.845 Certified statements regarding payment of prevailing rates of wage; retainage. (1)

The contractor or the contractor's surety and every subcontractor or the subcontractor's surety shall file certified statements with the public agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying:

(a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works; and

(b) That no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

(2) The certified statement shall be verified by the oath of the contractor or the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read the certified statement, that the contractor or subcontractor knows the contents of the certified statement and that to the contractor or subcontractor's knowledge the certified statement is true.

(3) The certified statements shall set out accurately and completely the contractor's or subcontractor's payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the gross wages the worker earned upon the public works during each week identified in the certified statement.

(4) The contractor or subcontractor shall deliver or mail each certified statement required by subsection (1) of this section to the public agency. Certified statements for each week during which the contractor or subcontractor employs a worker upon the public works shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

(5) Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract.

(6) Certified statements received by a public agency are public records subject to the provisions of ORS 192.410 to 192.505.

(7) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor is required to file certified statements under this section, the public agency shall retain 25 percent of any amount earned by the contractor on the public works until the contractor has filed with the public agency certified statements as required by this section. The public agency shall pay the contractor the amount retained under this subsection within 14 days after the contractor files the certified statements as required by this section, regardless of whether a subcontractor has failed to file certified statements as required by this section. The public agency is not required to verify the truth of the contents of certified statements filed by the contractor under this section.

(8) Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on a public works until the subcontractor has filed with the public agency certified statements as required by this section. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained under this subsection. The contractor shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by this section. Neither the public agency nor the contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under this section. [2003 c.794 §169; 2005 c.360 §11; 2009 c.7 §1]

279C.850 Inspection to determine whether prevailing rate of wage being paid; civil action for failure to pay prevailing rate of wage or overtime.

(1) At any reasonable time the Commissioner of the Bureau of Labor and Industries may enter the office or business establishment of any contractor or subcontractor performing public works and gather facts and information necessary to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works.

(2) Upon request by the commissioner, every contractor or subcontractor performing work on public works shall make available to the commissioner for inspection during normal business hours any payroll or other records in the possession or under the control of

the contractor or subcontractor that are deemed necessary by the commissioner to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works. The commissioner's request must be made a reasonable time in advance of the inspection.

(3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner under this section is not open to inspection by the public.

(4) The commissioner may, without necessity of an assignment, initiate legal proceedings against employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to require the payment of prevailing rates of wage or overtime pay due employees. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may determine reasonable as attorney fees. If the commissioner does not prevail in the action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account. [2003 c.794 §170]

279C.855 Liability for violations. (1) A contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of ORS 279C.840 is liable to the workers affected in the amount of the workers' unpaid minimum wages, including all fringe benefits, and in an additional amount equal to the unpaid wages as liquidated damages.

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors' bonds as provided for in ORS 279C.610.

(3) If a public agency fails to provide in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents that the contractor and any subcontractor must comply with ORS 279C.840, the liability of the public agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several with a contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840.

(4) If a public works project is subject to the Davis-Bacon Act, 40 U.S.C. 3141 et seq., and a public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract for public works as required under ORS 279C.830 (1)(a), or fails to provide in the contract that workers on the public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage as required under ORS 279C.830 (1)(d), the public agency is liable to each affected worker for:

(a) The worker's unpaid minimum wages, including fringe benefits, in an amount that equals, for each hour worked, the difference between the applicable higher rate of wage and the lower rate of wage; and

(b) An additional amount, equal to the amount of unpaid minimum wages due under paragraph (a) of this subsection, as liquidated damages.

(5) The Commissioner of the Bureau of Labor and Industries may enforce the provisions of subsections (3) and (4) of this section by a civil action under ORS 279C.850 (4), by a civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS 652.332. [2003 c.794 §171; 2007 c.844 §6; 2011 c.265 §3]

279C.860 Ineligibility for public works contracts for failure to pay or post notice of prevailing rates of wage; certified payroll reports to commissioner.

(1) A contractor, subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for public works for a period of three years from the date on which the Commissioner of the Bureau of Labor and Industries publishes the contractor's or subcontractor's name on the list described in subsection (2) of this section. The commissioner shall add a contractor's or subcontractor's name to the list after determining, in accordance with ORS chapter 183, that:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works;

(b) The subcontractor has failed to pay to the subcontractor's employees amounts required by ORS 279C.840 and the contractor has paid those amounts on the subcontractor's behalf;

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing rates of wage as required by ORS 279C.840 (4); or

(d) The contractor or subcontractor has intentionally falsified information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.

(2) The commissioner shall maintain a written list of the names of those contractors and subcontractors determined to be ineligible under this section and the period of time for which they are ineligible. The commissioner shall publish a copy of the list, furnish the list upon request and make the list available to contracting agencies.

(3) When the contractor or subcontractor is a corporation, the provisions of this section apply to any

corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing rate of wage, the failure to pay to a subcontractor's employees amounts required by ORS 279C.840 that are paid by the contractor on the subcontractor's behalf or the intentional falsification of information in the contractor's or subcontractor's certified statements submitted under ORS 279C.845.

(4) For good cause shown, the commissioner may direct the removal of the name of a contractor or subcontractor from the ineligible list.

(5) To assist the commissioner in determining whether the contractor or subcontractor is paying the prevailing rate of wage, when a prevailing rate of wage claim is filed, or evidence indicating a violation has occurred, a contractor or subcontractor required to pay the prevailing rate of wage to workers employed upon public works under ORS 279C.800 to 279C.870 shall send a certified copy of the payroll for those workers when the commissioner requests the certified copy. [2003 c.794 §174; 2009 c.107 §1]

279C.865 Civil penalties. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$5,000 for each violation of any provision of ORS 279C.800 to 279C.870 or any rule of the commissioner adopted thereunder.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All moneys collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining violations, conducting hearings and assessing and collecting the penalties. The remainder, if any, of moneys collected as penalties under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [2003 c.794 §177]

279C.870 Civil action to enforce payment of prevailing rates of wage. (1) The Commissioner of the Bureau of Labor and Industries or any other person may bring a civil action in any court of competent jurisdiction to require a public agency under a public contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of wage to workers employed on that contract and to require the contractor to pay the prevailing rate of wage and any deficiencies that can be shown to exist because of improper wage payments already made. In addition to other relief, the court may also enjoin the contractor or subcontractor from committing future violations. The contractor or subcontractor involved shall be named as a party in all

civil actions brought under this section. In addition to other costs, the court may award the prevailing party reasonable attorney fees at the trial and on appeal. However, attorney fees may not be awarded against the commissioner under this section.

(2) The court shall require any party, other than the commissioner, that brings a civil action under this section to post a bond sufficient to cover the estimated attorney fees and costs to the public agency and to the contractor or subcontractor of any temporary restraining order, preliminary injunction or permanent injunction awarded in the action, in the event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the commissioner would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279C.860. If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279C.860 (4). [2003 c.794 §176; 2007 c.764 §39; 2009 c.107 §2]

Chapter 447: Plumbing; Architectural Barriers

447.060 Engaging in certain plumbing work not affected. (1) ORS 447.010 to 447.156 do not apply to a person:

(a) Engaging in plumbing work when not so engaged for hire.

(b) Using the services of regular employees in performing plumbing work for the benefit of property owned, leased or operated by the person. For purposes of this paragraph, "regular employee" means a person who is subject to the provisions of ORS 316.162 to 316.221 and who has completed a withholding exemptions certificate required by ORS 316.162 to 316.221.

(c) Using the services of an employee or contractor of a utility company, energy service provider or water supplier to install an approved low-flow showerhead or faucet aerator in existing plumbing fixtures. The devices installed under this paragraph are exempt from the certification, permit and inspection requirements of ORS 447.010 to 447.156 and ORS chapter 693.

(2) A landscape contracting business licensed under ORS 671.560 is not required to be licensed under ORS 447.010 to 447.156 to install, repair or maintain backflow assemblies for irrigation systems and ornamental water features if the work is performed by an individual who is licensed as required by ORS 671.615 and is an owner or employee of the landscape

contracting business. The repair and maintenance of the backflow assembly must be performed by a tester certified under ORS 448.279. The licensing exemption established under this subsection does not exempt the landscape contracting business from the inspection and permit requirements of ORS 447.010 to 447.156.

(3) This section applies to any person, including but not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, this state, the federal government and state or federal agencies. [Amended by 1955 c.548 §7; 1973 c.835 §226; 1981 c.438 §34; 1987 c.561 §3; 1987 c.604 §15; 1993 c.293 §2; 2001 c.181 §1; 2003 c.14 §267; 2005 c.609 §8; 2005 c.758 §12a; 2007 c.541 §3]

Chapter 479:

Protection of Buildings From Fire; Electrical Safety Law

479.905 Definitions for ORS 479.870 and 479.905 to 479.945. For the purposes of ORS 479.870 and 479.905 to 479.945, except where the context requires otherwise:

(1) “Class A limited energy technician” means a person licensed to install, alter and repair all limited energy systems.

(2) “Class B limited energy technician” means a person licensed to install, alter and repair all limited energy systems that do not include protective signaling, including but not limited to:

- (a) HVAC;
- (b) Medical;
- (c) Boiler controls;
- (d) Intercom and paging systems;
- (e) Clock systems;
- (f) Data telecommunication installations; and
- (g) Instrumentation.

(3) “HVAC” means thermostat and associated control wiring of heating, ventilation, air conditioning and refrigeration systems. “HVAC” does not include boiler controls.

(4) “Limited energy electrical activity” means installation, alteration, maintenance, replacement or repair of electrical wiring and electrical products that do not exceed 100 volt-amperes in Class 2 and Class 3 installations, or that do not exceed 300 volt-amperes for landscape low voltage lighting systems that are cord connected to a ground fault circuit interrupter receptacle, under the electrical specialty code and the Low-Rise Residential Dwelling Code.

(5) “Protective signaling” includes fire alarm, nurse call, burglar alarm, security and voice evacuation systems and other systems that are part of a fire or life

safety system. [1991 c.529 §3; 1999 c.519 §1; 2001 c.728 §4; 2003 c.675 §45]

479.940 Activities not subject to licensure under ORS 479.510 to 479.945; identification cards. (1)

The licensure provisions of ORS 479.510 to 479.945 do not apply to the following activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise Residential Dwelling Code:

- (a) Prewiring of cable television and telephone systems owned by the owner of the residence;
- (b) Garage door openers;
- (c) Vacuum systems;
- (d) Audio and stereo systems;
- (e) HVAC;
- (f) Landscape sprinkler controls;
- (g) Landscape lighting; and
- (h) Doorbells.

(2) The provisions of subsection (1) of this section apply only to residential contractors holding a current license and proper endorsement issued by the Construction Contractors Board.

(3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a landscape contracting business licensed under ORS 671.510 to 671.760 when making installations of landscape irrigation control wiring and outdoor landscape lighting involving a Class II or Class III system that does not exceed 30 volts and 750 volt-amperes.

(b) A landscape contracting business exempt from licensing under this subsection shall issue an identification card to its landscape irrigation control wiring or outdoor landscape lighting installer. The form for the identification card shall be provided by the State Landscape Contractors Board. The identification card shall include the name of the installer, the name and State Landscape Contractors Board identification number of the landscape contracting business and the date of issue of the identification card. The card shall be carried by the installer at the job site when performing the allowed electric installations.

(4) The licensure provisions of ORS 479.510 to 479.945 do not apply to limited energy electrical activity involving the installation, maintenance or repair of lottery equipment at retail locations by employees or vendors of the Oregon State Lottery Commission. The exemption provided by this subsection does not authorize work by unlicensed persons on systems of 115 volts or more.

(5) All nonlicensure requirements of ORS 479.510 to 479.945, including permits for and compliance with the electrical specialty code, apply to activities conducted under subsections (1) to (4) of this section. If any person or business repeatedly violates the permit or code compliance requirements, in addition to any

other remedy, the Electrical and Elevator Board may suspend, condition or revoke a person's or business's right to use this provision. [1991 c.529 §7; 1999 c.402 §4; 2001 c.728 §7; 2003 c.14 §333; 2003 c.675 §46; 2007 c.385 §1; 2007 c.541 §5a; 2007 c.836 §46]

Chapter 571:
Nurseries; Growers; Dealers; Christmas Tree Growers

571.005 Definitions for ORS 571.005 to 571.230.

Unless the context requires otherwise, as used in ORS 571.005 to 571.230:

(1) "Agent" means any person only soliciting orders in this state for the purchase or sale of nursery stock for any principal who is not licensed under ORS 571.005 to 571.230 and 571.991.

(2) "Dealer":

(a) Means any person who deals in, sells, handles, consigns or accepts on consignment, imports, stores, displays or advertises nursery stock which the person has not grown.

(b) Does not mean a person whose business is located out of state and who imports and sells such nursery stock not grown in Oregon into this state and who only solicits such nursery stock sales through salesmen or representatives or by mail or advertisement. Such person to be exempt as a dealer must not own, lease, control or maintain buildings, warehouses or any location or place in Oregon in which or through which such nursery stock is stored, sold, offered for sale or held for sale or delivered therefrom. The nursery stock must be shipped direct from the out-of-state location or place of business to the grower, wholesaler, retailer or ultimate consumer or user in Oregon.

(3) "Department" means the State Department of Agriculture.

(4) "Grower" means any person who grows nursery stock.

(5) "Nursery stock" includes all botanically classified plants or any part thereof, such as floral stock, herbaceous plants, bulbs, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees and shrubs, berry plants, and all trees, shrubs and vines and plants collected in the wild that are grown or kept for propagation or sale. "Nursery stock" does not include:

(a) Field and forage crops.

(b) The seeds of grasses, cereal grains, vegetable crops and flowers.

(c) The bulbs and tubers of vegetable crops.

(d) Any vegetable or fruit used for food or feed.

(e) Cut flowers, unless stems or other portions thereof are intended for propagation.

(6) "Person" includes but is not limited to each branch store or place of business in which or at which the business of the dealer or grower is conducted and each member of a cooperative association.

(7) "Sell" or "sale" means to offer, expose or hold for sale, have for the purpose of sale, or to solicit orders for sale, or to deliver, distribute, exchange, furnish or supply. [1963 c.461 §1; 1977 c.638 §1]

571.015 Policy; department to maintain nursery

service; duties. (1) The Legislative Assembly finds and declares that the propagation and raising of nursery stock is an agricultural pursuit that should be regulated and assisted by the State Department of Agriculture. A nursery service shall be maintained within the department for the purpose of carrying out and enforcing the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(2) The department is authorized to:

(a) Inspect the nursery stock of growers, dealers and other persons and places of business provided for under ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(b) Issue certificates and permits and check the license and licensing of persons affected by ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(c) Investigate violations of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991.

(d) Disseminate information among growers relative to treatment of nursery stock for both prevention and elimination of attacks by plant pests and diseases.

(e) Carry out any other duties or responsibilities which are of service to the nursery industry or which may be necessary for the protection thereof. [1953 c.461 §4; 1983 c.730 §4]

571.045 Exemption from licensing

requirements. ORS 571.055 (1) and 571.057 do not apply to:

(1) Any person whose business consists only of retail sales to the ultimate consumer and the total of such sales of nursery stock does not exceed \$250 during a fiscal year. Except as provided in subsection (2) of this section, the provisions of ORS 564.040, 564.991, 571.005 to 571.230 and 571.991 apply at any time the sales of nursery stock exceed \$250 during a fiscal year.

(2) A person licensed as a landscape contracting business under ORS 671.560 and 671.565 who does not grow plants, does not store plants except as provided by the State Department of Agriculture by rule, and acquires all plants from a nursery licensed under this chapter. [1963 c.461 §15; 1971 c.756 §1; 1975 c.110 §1; 1977 c.638 §2; 1999 c.535 §1; 2007 c.541 §6]

571.055 License required to grow or deal in nursery stock; false representations or statements regarding licenses. (1) No person, without first obtaining a license from the State Department of Agriculture, shall:

- (a) Operate as a grower, dealer or agent.
 - (b) Advertise or display nursery stock for sale on any stand, market stall, store or other place of business.
 - (c) Advertise nursery stock for sale by the use of signboards, placards, public communications media, newspapers, business letterhead stationery or other circulating medium.
 - (d) Transport, move, store or warehouse nursery stock grown or held for sale. However, this paragraph does not apply to common carriers.
- (2) No person shall:
- (a) Falsely represent that the person is a licensed grower, dealer or agent.
 - (b) Willfully make a false statement when making an application for a license. [1963 c.461 §§5,9]

571.135 Shipping permits, shipping invoices and bills of lading accompanying shipments and deliveries; retention; exceptions. (1) The State Department of Agriculture may issue a shipping permit number to any licensee who requests or requires one. The shipping permit number shall be the same as the license number and so designated on the license.

(2) When authorized or required by the department, the shipping permit number shall accompany all shipments and deliveries of nursery stock.

(3) A shipping invoice or bill of lading shall accompany a commercial shipment or delivery of nursery stock to be offered for sale. If a shipping invoice accompanies the shipment or delivery, the shipping invoice shall include the following:

- (a) The name and address of the owner of the nursery stock.
- (b) The nursery license number of the owner of the nursery stock.
- (c) The point of origin of the nursery stock.
- (d) The specific destination to which the nursery stock is being shipped or delivered.
- (e) A description or inventory of the nursery stock in sufficient detail to allow identification of the nursery stock being shipped or delivered. The description or inventory shall include, at a minimum, the numbers, sizes and varieties of plants included in the shipment or delivery.
- (f) The signature of the nursery stock carrier or the carrier's agent.

(4) The department, by rule, may develop a standard form for shipping invoices described in

subsection (3) of this section and may make the form available at cost to licensees upon request.

(5) Each of the following persons shall retain a copy of the signed shipping invoice or the bill of lading for a commercial shipment or delivery of nursery stock to be offered for sale:

- (a) The owner of the nursery stock.
- (b) The carrier or carrier's agent transporting the nursery stock.
- (c) The person taking delivery of the nursery stock at the shipment or delivery destination.

(6) Subsections (3) and (5) of this section do not apply to:

- (a) A commercial shipment or delivery between two points owned, rented or leased by the owner of the nursery stock; or
- (b) A commercial shipment or delivery of nursery stock in the possession of a business licensed by the State Landscape Contractors Board. [1963 c.461 §16; 2005 c.390 §1]

571.250 Interagency agreement to ensure compliance. The State Landscape Contractors Board and the State Department of Agriculture shall enter into an interagency agreement to address how the board and the department shall ensure that licensed landscape contracting businesses comply with the provisions of this chapter. [1999 c.535 §3; 2007 c.541 §8]

Chapter 656: Workers' Compensation

656.021 Person performing work under ORS chapter 701 as subject employer. Notwithstanding ORS 656.029 (1), a person who is licensed pursuant to an application under ORS 701.046 and is acting under a contract to perform work described by ORS chapter 701 shall be considered the subject employer for all individuals employed by that person. [1989 c.870 §13; 1999 c.402 §7; 2007 c.836 §48]

656.025 Individuals engaged in commuter ridesharing not subject workers; conditions. (1) For the purpose of this chapter, an individual is not a subject worker while commuting in a voluntary commuter ridesharing arrangement unless:

- (a) The worker is reimbursed for travel expenses incurred therein;
- (b) The worker receives payment for commuting time from the employer; or
- (c) The employer makes an election to provide coverage for the worker pursuant to ORS 656.039.

(2) As used in this section "voluntary commuter ridesharing arrangement" means a carpool or vanpool arrangement in which participation is not required as a

condition of employment and in which not more than 15 persons are transported to and from their places of employment, in a single daily round trip where the driver also is on the way to or from the driver's place of employment. [1981 c.227 §4]

656.027 Who are subject workers. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection "domestic servant" means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

(A) The employment is not in the course of the trade, business or profession of the employer; or

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, "casual" refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than \$500.

(4) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States.

(5) A worker engaged in the transportation in interstate commerce of goods, persons or property for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business in this state.

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction,

alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto. When labor or services are performed under contract, the partnership must qualify as an independent contractor.

(9) Except as provided in subsection (25) of this section, members, including members who are managers, of limited liability companies, regardless of the nature of the work performed. However, members, including members who are managers, of limited liability companies with more than one member, while engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. When labor or services are performed under contract, the limited liability company must qualify as an independent contractor.

(10) Except as provided in subsection (24) of this section, corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officers, subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

(b) If the activities of the corporation involve the commercial harvest of timber and all officers of the corporation are members of the same family and are parents, daughters or sons, daughters-in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers. For all other corporations involving the commercial harvest of timber, the maximum number of exempt corporate officers for the corporation shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(c) When labor or services are performed under contract, the corporation must qualify as an independent contractor.

(11) A person performing services primarily for board and lodging received from any religious, charitable or relief organization.

(12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

(13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and

who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.

(14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

(15) A person who has an ownership or leasehold interest in equipment and who furnishes, maintains and operates the equipment. As used in this subsection "equipment" means:

(a) A motor vehicle used in the transportation of logs, poles or piling.

(b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

(c) A motor vehicle used in the transportation of property by a for-hire motor carrier that is required under ORS 825.100 or 825.104 to possess a certificate or permit or to be registered.

(16) A person engaged in the transportation of the public for recreational down-river boating activities on the waters of this state pursuant to a federal permit when the person furnishes the equipment necessary for the activity. As used in this subsection, "recreational down-river boating activities" means those boating activities for the purpose of recreational fishing, swimming or sightseeing utilizing a float craft with oars or paddles as the primary source of power.

(17) A person who receives no wage other than ski passes or other noncash remuneration for performing volunteer:

(a) Ski patrol activities; or

(b) Ski area program activities sponsored by a ski area operator, as defined in ORS 30.970, or by a nonprofit corporation or organization.

(18) A person 19 years of age or older who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public and perform or undertake any necessary or attendant functions related thereto.

(19) A person performing foster parent or adult

foster care duties pursuant to ORS 412.001 to 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

(20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals, lodging or expenses.

(21) A person performing services under a property tax work-off program established under ORS 310.800.

(22) A person who performs service as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course.

(23)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other partnerships licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be whichever is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject workers. For all other companies licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt company members shall be whichever is the greater of the following:

(A) Two company members; or

(B) One company member for each 10 company employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(26) A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis.

(27) A person performing language translator or interpreter services that are provided for others through an agent or broker.

(28) A person who operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is operated as a taxicab or for nonemergency medical transportation. As used in this subsection:

(a) "Lease" means a contract under which the lessor provides a vehicle to a lessee for consideration.

(b) "Leasehold" includes, but is not limited to, a lease for a shift or a longer period.

(c) "Passenger motor vehicle that is operated as a taxicab" means a vehicle that:

(A) Has a passenger seating capacity that does not exceed seven persons;

(B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

(C)(i) Carries passengers for hire when the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time; or

(ii) Is in use under a contract to provide specific service to a third party to transport designated passengers or to provide errand services to locations selected by the third party.

(d) "Passenger motor vehicle that is operated for nonemergency medical transportation" means a vehicle

that:

(A) Has a passenger seating capacity that does not exceed seven persons;

(B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

(C) Provides medical transportation services under contract with or on behalf of a mass transit or transportation district. [1965 c.285 §9; 1971 c.386 §1; 1977 c.683 §1; 1977 c.817 §2; 1977 c.835 §7; 1979 c.821 §1; 1981 c.225 §1; 1981 c.444 §1; 1981 c.535 §3; 1981 c.839 §1; 1983 c.341 §1; 1983 c.541 §1; 1983 c.579 §3; 1985 c.431 §1; 1985 c.706 §2; 1987 c.94 §168; 1987 c.414 §161; 1987 c.800 §2; 1989 c.762 §4; 1990 c.2 §4; 1991 c.469 §1; 1991 c.707 §1; 1993 c.18 §138a; 1993 c.494 §2; 1993 c.777 §10; 1995 c.93 §32; 1995 c.216 §§3,3a; 1995 c.332 §6; 1997 c.337 §1; 1999 c.314 §91; 1999 c.402 §8; 2001 c.363 §1; 2001 c.765 §4; 2003 c.677 §1; 2005 c.167 §1; 2007 c.465 §6; 2007 c.541 §9; 2007 c.721 §1; 2007 c.836 §49; 2008 c.32 §§2,3]

656.029 Obligation of person awarding contract to provide coverage for workers under contract; exceptions; effect of failure to provide coverage. (1)

If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is responsible for providing workers' compensation insurance coverage for all individuals, other than those exempt under ORS 656.027, who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(2) If a person to whom the contract is awarded is exempt from coverage under ORS 656.027, and that person engages individuals who are not exempt under ORS 656.027 in the performance of the contract, that person shall provide workers' compensation insurance coverage for all such individuals. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person to whom the contract is awarded, that person shall be treated as a noncomplying employer and benefits shall

be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(3) As used in this section:

(a) "Person" includes partnerships, joint ventures, associations, corporations, limited liability companies, governmental agencies and sole proprietorships.

(b) "Sole proprietorship" means a business entity or individual who performs labor without the assistance of others. [1979 c.864 §2; 1981 c.725 §1; 1981 c.854 §4; 1983 c.397 §1; 1983 c.579 §2a; 1985 c.706 §1; 1989 c.762 §5; 1995 c.93 §34; 1995 c.332 §6a]

CHAPTER 670: INDEPENDENT CONTRACTORS

670.600 Independent contractor defined. (1) As used in this section:

(a) "Individual" means a natural person.

(b) "Person" has the meaning given that term in ORS 174.100.

(c) "Services" means labor or services.

(2) As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person who provides services for remuneration and who, in the provision of the services:

(a) Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;

(b) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business;

(c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and

(d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

(3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

(a) The person maintains a business location:

(A) That is separate from the business or work location of the person for whom the services are provided; or

(B) That is in a portion of the person's residence and that portion is used primarily for the business.

(b) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:

(A) The person enters into fixed-price contracts;

(B) The person is required to correct defective work;

(C) The person warrants the services provided; or

(D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

(c) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) The person makes 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.

(e) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

(4) Subsection (2)(b) of this section does not apply if the person files a Schedule F as part of an income tax return and the person provides farm labor or farm services that are reportable on Schedule C of an income tax return.

(5) For purposes of determining whether an individual provides services as an independent contractor:

(a) The creation or use of a business entity, such as a corporation or a limited liability company, by an individual for the purpose of providing services does not, by itself, establish that the individual provides services as an independent contractor.

(b) When the individual provides services through a business entity, such as a corporation or a limited liability company, the provisions in subsection (2), (3) or (4) of this section may be satisfied by the individual or the business entity. [Formerly 701.025; 1997 c.398 §2; 1999 c.402 §9; 2003 c.704 §5; 2005 c.533 §§1,2]

670.605 Rules for application of definition of independent contractor. (1) In accordance with ORS chapter 183, those agencies responsible for the administration of ORS 671.510 to 671.760 and ORS chapters 316, 656, 657 and 701 jointly shall adopt rules to carry out the provisions of ORS 670.600.

(2) The agencies responsible for the administration of ORS 671.510 to 671.760 and ORS chapters 316, 656, 657 and 701 shall cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600. [Formerly 701.030; 2001 c.409 §4; 2005 c.94 §115; 2005 c.533 §3a]