

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED
03/31/2021 1:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Compliance with licensing requirements when labor contractors enter into subcontracts with other labor contractors

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/03/2021 5:00 PM

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

CONTACT: Erin Seiler
503-382-7934
erin.seiler@state.or.us

800 NE Oregon
#1045
Portland, OR 97232

Filed By:
Erin Seiler
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/23/2021

TIME: 10:00 AM - 11:00 AM

OFFICER: Erin Seiler

ADDRESS:

800 NE Oregon
#1045

Portland, OR 97232

SPECIAL INSTRUCTIONS:

Due to COVID-19 restrictions, this public hearing will be conducted by teleconference only. The meeting is open to the public: Please dial 503-300-2595. No access code is needed.

As the presiding officer of the hearing, I will ask for each public participant to state their name and affiliation before they testify. Written testimony may be submitted via email at erin.seiler@state.or.us.

NEED FOR THE RULE(S):

The Bureau of Labor and Industries (BOLI) is responsible for the licensing of labor contractors in Oregon. A labor contractor, subject to licensure, includes anyone who receives compensation for recruiting, soliciting, supplying or employing workers to perform labor in farm/forest, construction, and property services/janitorial industries. The licensure requirement includes those labor contractors who subcontract with another to perform the activities of a

labor contractor. A licensed labor contractor is required to only subcontract with other licensed labor contractors (ORS 658.405).

The agency wants to improve compliance and transparency related to the labor contracting licensure process, specifically the requirement that a licensed labor contractor only subcontract with other licensed labor contractor's. To ensure that labor contractors know that they need to subcontract with only other licensed labor contractors, unless an exclusion exists, the agency proposes an amendment to the rules regulating labor contracting licensure process that would improve the assessment of an applicants' character, competence, and reliability. The proposed amendment would add failure to inspect a contractor's license or temporary permit as required by ORS 658.437 and OAR 837-015-0509 when entering into a subcontract with another labor contractor as an element of consideration of applicants' character, competence, and reliability failure.

BOLI would implement this new element of character, competence, and reliability considerations by requiring labor contractors provide information about who they subcontract with as part of the existing licensure application. This would ensure labor contractors recognize that they need to subcontract with only other licensed labor contractors, improve compliance with the law, and transparency in labor contracting.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

No documents were utilized.

FISCAL AND ECONOMIC IMPACT:

Labor contractors will comply with the proposed rule by providing information about who they subcontract with as part of the existing licensure application. The additional information required by an applicant may have a minimal increase in administrative or reporting costs.

COST OF COMPLIANCE:

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

(1) The proposed rules will not have an effect on state agencies, local governments, or the public.

(2) Effect on Small Businesses:

(a) A labor contractor, subject to the proposed rules, includes anyone who receives compensation for recruiting, soliciting, supplying, or employing workers to perform labor in farm/forest, construction, and property services/janitorial industries. Currently, there are a total of 1038 labor contractors licensed by the Bureau of Labor and Industries and subject to the proposed rule.

(b) Labor contractors will comply with the proposed rule by providing information about who they subcontract with as part of the existing licensure application. The additional information required by an applicant may have a minimal

increase in administrative or reporting costs.

(c) The proposed rule does not increase the cost of professional services, equipment supplies, labor, or administration.

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

Small businesses were not involved in the development of the rule.

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

An administrative rule advisory committee was not consulted. The proposed rule was identified by the agency as needed to improve compliance and transparency with the licensure process and requirements for labor contractors.

AMEND: 839-015-0145

RULE SUMMARY: Amend OAR 839-015-0145 to include inspection of subcontractor's license or temporary permit as part of the character, competence, and reliability of a labor contractor.

CHANGES TO RULE:

839-015-0145

Character, Competence and Reliability ¶¶

The character, competence and reliability contemplated by ORS 658.405 to 658.475 and these rules includes, but is not limited to, consideration of an applicant's conduct, the conduct of any person financially interested in the applicant's proposed operation as a labor contractor, or the conduct of any business in which any person financially interested in the applicant's proposed operation as a labor contractor has had a financial interest, whether as a partner, shareholder, or profitsharer, with respect to the following: ¶¶

- (1) Relations with workers, farmers and others with whom the person conducts business. ¶¶
- (2) Reliability in adhering to the terms and conditions of any contract or agreement between the person and those with whom the person conducts business. ¶¶
- (3) Timeliness in paying all debts owed, including advances and wages. ¶¶
- (4) Any unsatisfied judgments or felony convictions. ¶¶
- (5) The cancellation of or inability to obtain a bond, if applicable. ¶¶
- (6) Provision of workers' compensation coverage for each worker or payment of worker's compensation insurance premium payments when due. ¶¶
- (7) Violation of any provision of ORS 658.405 to 658.503 or these rules. ¶¶
- (8) Employment of an agent who has had a labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of ORS 658.405 to 658.503 or these rules. ¶¶
- (9) Providing notification to the bureau of any change in the circumstances under which a license was issued. ¶¶
- (10) Failure to comply with federal, state or local laws or ordinances relating to income taxes, social security taxes, unemployment compensation tax, or any tax, fee or assessment of any sort. ¶¶
- (11) Failure to comply with federal, state or local laws or ordinances named in OAR 839-015-0310. ¶¶
- (12) When required by law, failure or refusal to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required for the safety and health of workers. ¶¶
- (13) Repeated failures to file or furnish all forms and other information required by ORS 658.405 to 658.503 and these rules. ¶¶
- (14) Any willful misrepresentation, false statement or concealment in the application for a license. ¶¶

(15) Any false, fraudulent or misleading representation willfully made or caused to be made to any person, or publication or circulation of any false, fraudulent or misleading information concerning the terms, conditions, or existence of employment at any place or by any person. ¶

(16) Failure to maintain the bond or cash deposit as required by ORS 658.405 to 658.503.¶

(17) Failure to inspect a contractor's license or temporary permit as required by ORS 658.437 and OAR 837-015-0509 when entering into a subcontract with another labor contractor.

Statutory/Other Authority: ORS 658, ORS 651

Statutes/Other Implemented: ORS 658.405 - 658.503