

Construction Contractors Board

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State of Oregon
Tina Kotek, Governor

Zoom Meeting Call In: 1 (669) 254-5252, Meeting ID: 160 158 5419 Passcode: 857851

The meeting is accessible to the public by telephone, video conference, or in-person attendance. To request video conference information, please contact Julie Nadeau by email at julie.t.nadeau@ccb.oregon.gov at least 48 hours prior to the meeting.

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8/14/2023

NOTICE OF PUBLIC MEETING
CCB Teleconference Board Meeting
Wednesday, August 23, 2023
8:30 a.m. – 11:30 a.m.

	Page
Meeting Called to Order	
Roll Call	
Approval of the Agenda	ACTION ITEM
Approval of the Minutes 7/26/2023 Board meeting.....	ACTION ITEM
Board Calendar:	
Next Meeting: October 25, 2023 (In Person; Teleconference option available)	(pg 4)
Public Comment	
Agency Reports	
Administrator	
1. Budget Update (<i>Late Submission</i>)	
2. House Bill 2922 Implementation Update (<i>Late Submission</i>)	
New Business	
1. Proposed Rule Changes	ACTION ITEM
Adjournment	

The Board may meet in executive session under authority of ORS 192.660 from time to time. The specific statutory basis for the executive session will be announced on the record prior to the commencement of the executive session. Executive sessions are closed to the public. The Board may recess the public meeting, in order to deliberate privately, under authority of ORS 192.690(1). The public meeting will then reconvene for the purpose of decision-making. The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting; contact Julie Nadeau by email at julie.t.nadeau@ccb.oregon.gov or by phone at (503) 934-2217 to make arrangements.

**MINUTES OF THE JULY 26, 2023
CONSTRUCTION CONTRACTORS BOARD MEETING
PUBLIC SESSION**

The Construction Contractors Board (CCB) met on Wednesday, July 26, 2023, via Zoom teleconference.

ATTENDEES:

Board members appearing: Chair Dylan Bochsler, Vice Chair Eric Olsen, Rosa Martinez, Abel Carbajal, and Deb Flagan

Board members absent: Kurt Bolser

Staff: Administrator Chris Huntington, Board Secretary Julie Nadeau, Licensing Manager Dana Zeimantz, Enforcement Manager Vena Swanson, Communication/Education Manager Leslie Culpepper, Assistant Attorney General Catriona McCracken, System Improvement Analyst Ashlie Rios, and Michelle Lisper (9:01am)

MEETING CALLED TO ORDER:

Chair Bochsler called the meeting to order at 8:32 am.

APPROVAL OF AGENDA:

Dylan Bochsler recommended moving the consent agenda ahead of agency reports to conclude items requiring a vote while a quorum is present.

MOTION: Eric Olson moved to approve the agenda as amended. Deb Flagan seconded the motion.

BOARD ACTION: 5 Ayes; Motion to approve carried unanimously.

APPROVAL OF MINUTES:

MOTION: Rosa Martinez moved to approve the minutes from April 26, 2023. Eric Olson seconded the motion.

BOARD ACTION: 5 Ayes; Motion to approve carried unanimously.

DATE OF NEXT REGULARLY SCHEDULED MEETING: The next meeting is scheduled for August 23, 2023 in person from the 1st floor Hearing Room at 201 High Street SE, Salem, Oregon and via Zoom teleconference.

PUBLIC COMMENT:

No public comment

NEW BUSINESS:

Enforcement Consent Agenda

MOTION: Eric Olsen made a motion to approve the Notices of Intent and Final Orders on the Enforcement Consent Agenda. Deb Flagan seconded the motion.

BOARD ACTION: 5 Ayes; Motion to approve carried unanimously.

AGENCY REPORTS:

Chris Huntington, Agency Administrator noted four current board vacancies and discussed the appointment process. After the September Senate confirmation hearing, there will still be one remaining vacancy as Andrea Noble resigned her public member position. The August board meeting will be dedicated to rule implementation for new legislation as changes are required after the passage of SB228 and HB2922.

Mr. Huntington provided an overview of the new call back feature deployed in the licensing call center, noting that feedback from callers has been positive, wait times diminished, and dropped calls nearly eliminated though staff is still working to perfect the technology configuration. Eric Olson asked for data regarding how many people are unavailable at the time of the return call to which Dana Zeimantz reported that it happens rarely.

Mr. Huntington provided an overview of the budget, reporting that the agency has not seen the typical seasonal drop-off in license applications. However, while the CCB will start the biennium with a higher beginning balance than expected, COLAs will increase approximately \$900,000 and IT investment costs have increased significantly as well. The board was asked to identify information needed to allow for consideration of a path forward. Dylan Bochsler asked how much the board spends on credit card processing fees and Mr. Huntington estimated \$200,000. Eric Olson asked for scenarios for a tiered fee increase to minimize the impact on small contractors and Rosa Martinez suggested separate fees for residential and commercial contractors. Dylan Bochsler asked if fees could be tied to inflation or include projected increases to avoid future shortfalls. Deb Flagan asked that staff recommendations be provided with an emphasis on maintaining customer service levels.

Dana Zeimantz, Licensing Manager reported that the licensing team is fully staffed and immersed in training. Additional information will be provided at the October meeting regarding call back feature data as well as the new online payment project. Deb Flagan asked about complaints regarding the receipt of inconsistent answers to questions from staff. Ms. Zeimantz said it's likely related to how questions are asked, the level of detail provided, and how staff interpret the questions.

Leslie Culpepper, Communication and Education Manager shared information about her team's return to home shows and outreach events. While it is good to be back out in the community, they plan to maintain a lower attendance at events because non-traditional methods of reaching homeowners are proving to be more effective and efficient.

Vena Swanson, Enforcement Manager highlighted another successful sweeps season for her team with approximately 900 job site checks performed. Recruitment has been successful with a new field investigator hired for central Oregon, a lateral appointment moving a field investigator to mediations to replace a retiree, and the appointment of a new office specialist in support of the entire division. Ms. Swanson reported a steady increase in the Disputes Resolution caseload which currently sits at approximately 370 cases per analyst. A review of cases found an estimated 40% are related to contractors who failed to start work, 40% are related to complaints of bad work, and 20% are complaints of non-payment.

OLD BUSINESS:

None

NEW BUSINESS:

Chris Huntington shared the results of the biennial Homeowner Survey as required for KPM reporting. The results showed a large increase in homeowner awareness of the CCB and services provided as well as the importance of using a licensed contractor. There are several efforts that could be contributing to the change in results and the Communications team will continue this work.

The meeting adjourned at 9:50 am.

2023 CCB Board Meeting Calendar

DATE	NOTED ITEMS	LOCATION
February 22, 2023		1st Floor Hearings Room or Teleconference via ZoomGov
April 26, 2023	Election of Officers	1st Floor Hearings Room or Teleconference via ZoomGov
June 21, 2023	New Officer Terms Begin	1st Floor Hearings Room or Teleconference via ZoomGov
August 23, 2023	KPM Best Practices Survey Finalized	1st Floor Hearings Room or Teleconference via ZoomGov
October 25, 2023		1st Floor Hearings Room or Teleconference via ZoomGov
December 6, 2023		1st Floor Hearings Room or Teleconference via ZoomGov

The following dates will be reserved for potential meetings in the event that urgent matters arise requiring immediate action by the Board. Board members and the public will be notified in advance when a meeting is going to occur, and whether it will be held in Salem or via teleconference.

- January 25, 2023
- March 22, 2023
- May 24, 2023
- July 26, 2023
- September 20, 2023

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CONSTRUCTION CONTRACTORS BOARD

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To: CCB Board
From: Chris Huntington, Administrator
Shannon Flowers, Policy Analyst
Date: August 14, 2023
Subject: Proposed Rule Changes for 2023 Legislation Implementation

Summary of Legislative Changes

Senate Bill 228

- **Bill Summary**
 - Specifies additional circumstances under which Construction Contractors Board may revoke, suspend, condition, or refuse to issue or reissue license for construction contractor, or impose civil penalty for violation of laws that regulate work of construction contractors in this state. Provides board with additional rulemaking powers related to obtaining or maintaining construction contractor license and resolving complaints. Requires licensed contractors to notify board within 10 days after change in status if contractor's status changes from exempt to nonexempt or from nonexempt to exempt.
 - Signed into law on July 13, 2023
- **Statutes Amended**
 - ORS 701.046, 701.063, 701.098, 701.117, 701.992
- **Rule Changes Required**
 - OAR 812-002-0260, 812-003-0260, 812-003-0280, 812-003-0290, 812-003-0321, 812-003-0380 (Possible), 812-003-0390, 812-004-1320, 812-005-0100, 812-005-0140, 812-005-0160, 812-005-0250, 812-005-0280, 812-005-0800, 812-009-0340
- **CCB Impact**
 - DRS
 - Allows CCB to identify by rule additional circumstances that would allow the agency to accept jurisdiction over a complaint that complies with

submission deadlines to the maximum degree possible under the circumstances. This may cause a minor increase to workload for the DRS section. This will be addressed in future rulemaking.

- Compliance
 - SB 228 adds additional circumstances under which CCB may revoke, suspend, condition, or refuse to issue or reissue license for construction contractor, or impose civil penalty for violation of laws that regulate work of construction contractors in this state. This may lead to a minor increase in cases and workload for the compliance section.
 - The addition of the option to condition a license may require some policy implementation related to how/when that tool will be used for licensees.
- Licensing
 - The bill allows for some additional circumstances that may lead to a denial of a license. This may lead to more denials of applications/renewals and an increased workload for the licensing section if those denials lead to an administrative hearing.
 - Additions to application and renewal forms may be necessary to include the new requirement to verify exempt/non-exempt status.
- **Industry Impact**
 - Additional notification requirements related to exempt/non-exempt status - Requires licensed contractors to notify board within 10 days after change in status and to certify status at time of issue or renewal of a license.
 - Additional enforcement tools that may impact companies facing a compliance case or who are entering into a settlement agreement through the DRS process.

House Bill 2922

- **Bill Summary**
 - Increases required bond amounts for all licensed contractors by \$5000.00.
 - Takes effect 91 days after sine die; however, new requirements not operative until January 1, 2024
 - Signed into law on July 13, 2023
- **Statutes Amended**
 - ORS 701.081, 701.084, 701.153 and 701.470
- **Rule Changes Required**
 - OAR 812-003-0171 update rule to reflect new standards.
- **CCB Impact**
 - Temporary increase to workload for licensing staff in late 2023/early 2024.
 - Possible changes to forms or documents.
- **Industry Impact**
 - Beginning on January 1, 2024, Contractors will be required to hold the larger bond amounts listed in HB 2922 and will be required to provide proof of the

required bond amount to CCB. This will likely cause a very minor increase to costs for the affected businesses.

Other Bills

- **HB 2001:** Establishes Oregon Housing Needs Analysis in Oregon Department of Administrative Services.
- **HB 2112:** Updates definitions and terminology used in public records law pertaining to records retention.
- **HB 2295:** Broadens public contracting preference for businesses that service-disabled veterans own to include all veteran-owned businesses.
- **HB 2806:** Authorizes governing body of public body to meet in executive session to consider matters relating to safety of governing body, public body staff and public body volunteers and to security of public body facilities and meeting spaces and relating to cyber security infrastructure and responses to cyber security threats.
- **HB 2984:** Allows conversion of building from commercial use to housing within urban growth boundary under certain conditions.
- **HB 3111:** Exempts from public disclosure personal information of employees and retirees maintained by retirement system operated by local government.
- **HB 3154:** Limits improvements that landlord of manufactured dwelling park may require of tenant.
- **HB 3215:** Authorizes Housing and Community Services Department to support replacement, reconstruction or rehabilitation of residential units damaged or destroyed by disaster and to support recovery of residents of such housing.
- **HB 3395:** Allows affordable housing on lands zoned for commercial uses within urban growth boundaries.
- **HB 3442:** Authorizes local governments to allow, prohibit, require zone change for or subject to conditional use permit development of certain affordable housing on certain lands within tsunami inundation zones or 100-year floodplains.
- **SB 224:** Updates and modernizes statutes that regulate practice of architecture in this state to conform with actual current practice of architecture.
- **SB 406:** Requires certain cities and communities in Tillamook County to allow middle housing on residentially zoned lands, to adopt housing production strategies and to accommodate estimated housing needs upon lands inventoried as buildable lands.
- **SB 594:** Requires payment of prevailing rate of wage for demolition of or removal of hazardous waste from road, highway, building, structure or improvement in public improvement contract that uses \$750,000 or more of public funds or that occurs on real property that state agency owns, including demolition or removal of hazardous waste that occurs in connection with construction, reconstruction, renovation or painting of road, highway, building, structure or improvement.

Bills Not Passed

- **HB 2057:** Bill would have made contractors jointly and severally liable in civil or administrative action for unpaid wages of unrepresented employee(s) of subcontractors.

- **HB 2870:** Acceptance of bonds in lieu of retainage for construction projects and public improvement contracts
- **HB 3385:** Defined “major residential contractor” and placed limitations on those contractors related to contracts and deposit amounts.
- **SB 11:** Requires certain executive department boards or commissions that conduct public meetings through electronic means to record and promptly publish recording on website or hosting service so that public may observe or listen to meetings free of charge.
- **SB 722:** Relating to retainage in construction contracts.

Recommendation

Several current administrative rules need substantial amendments while others require only minor housekeeping to implement the new laws passed during the 2023 legislative session.

Additions to rules will be **bold and underlined**, subtractions from rules will be ~~struck through~~.

Recommend the Board approve proposed rule changes for public hearing and subsequent permanent adoption so long as no substantive changes are made as a result of the public hearing.

Proposed Rule Amendment	Explanation
<p>812-002-0260 Dishonest or Fraudulent Conduct</p> <p>"Dishonest or fraudulent conduct", as used in ORS 701.098(1)(L)(o) and (4)(a)(D) includes, but is not limited to, the following:</p> <p>(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or</p> <p>(2) Failing to pay monies when due for materials or services rendered in connection with the applicant's or licensee's operations as a contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or</p> <p>(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or</p> <p>(4) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or</p> <p>(5) Submitting a license application that includes false or misleading information; or</p>	<p>Implements SB 228 §(1)(c) provisions.</p> <p>Minor change to numbering of defining statute and addition of failure to comply with a settlement agreement as an action that constitutes “dishonest and fraudulent conduct”.</p>

<p>(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; or</p> <p>(7) Failing to pay minimum wages or overtime wages as required under state or federal law; or</p> <p>(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279C.800 to 279C.870; or</p> <p>(9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance.</p> <p>(10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.</p> <p>(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.</p> <p>(12) Presenting for payment to the Board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account.</p> <p><u>(13) Entering into a settlement agreement with another person under ORS 701.145 and failing to comply with the terms of the settlement agreement.</u></p>	
<p>812-003-0260 Application for New License</p> <p>(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:</p> <p>(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);</p> <p>(b) Mailing and location address of the business entity;</p> <p>(c) Legal name and address (which may be the business address) of:</p> <p>(A) The owner of a sole proprietorship;</p> <p>(B) All partners of a general partnership or limited liability partnership;</p> <p>(C) All joint venturers of a joint venture;</p> <p>(D) All general partners of a limited partnership;</p> <p>(E) All corporate officers of a corporation;</p> <p>(F) All trustees of a trust;</p> <p>(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;</p>	<p>Implements SB 228 §6 (1)(b) and (2) provisions.</p> <p>Addition of requirement that applicants for new and renewed licenses include a declaration verifying the exempt or non-exempt status of the business.</p>

<p>(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;</p> <p>or</p> <p>(I) The responsible managing individual designated by the applicant.</p> <p>(d) Except for a public company, the date of birth and driver license number or number associated with United States government-issued identification of:</p> <p>(A) The owner of a sole proprietorship;</p> <p>(B) All partners of a general partnership or limited liability partnership;</p> <p>(C) All joint venturers of a joint venture;</p> <p>(D) All general partners of a limited partnership;</p> <p>(E) All corporate officers of a corporation;</p> <p>(F) All trustees of a trust;</p> <p>(G) The manager and all members of a manager-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;</p> <p>(H) All members of a member-managed limited liability company, and, if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees, managers or members of the entity that is a member of the limited liability company that is the subject of this paragraph;</p> <p>or</p> <p>(I) The responsible managing individual designated by the applicant.</p> <p>(J) For purposes of this subsection, a “public company” means any business entity that offers securities registered for sale by the federal Securities and Exchange Commission to the general public.</p> <p>(e) Social security number of the owner of a sole proprietorship or partners, if partners are human beings, in a general partnership;</p> <p>(f) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;</p> <p>(g) License endorsement sought, as provided for under OAR 812-003-0131;</p>	
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(h) The driver license number or number associated with United States government-issued identification of the responsible managing individual who has completed the education and passed the examination required under ORS 701.122 or is otherwise exempt under division 6 of these rules;

(i) Names and certification numbers of all certified locksmiths if the entity is a Residential Locksmith Services Contractor or will do work providing locksmith services under ORS 701.475 to 701.490;

(j) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(k) Names and certification numbers of all certified home energy assessors if the entity is a Home Energy Performance Score Contractor providing home energy performance scores under ORS 701.527 to 701.536 or will do work providing home energy performance scores.

(l) For each person described in subsection (1)(c) of this section, the following information if related to construction activities:

(A) If unsatisfied on the date of application, a copy of a final judgment by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body;

(B) If unsatisfied on the date of application, a copy of a final order by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or public body;

(C) If pending on the date of application, a copy of a court complaint filed in any state that alleges that the person owes money to another person or public body; or

(D) If pending on the date of application, a copy of an administrative notice of action issued in any state that alleges that the person owes money to another person or public body.

(m) For each person described in subsection (1)(c) of this section, the following information if related to construction activities;

(A) A copy of a judgment of conviction for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date; or

(B) A copy of an indictment for a crime listed in ORS 701.098(1)(i), entered within five years preceding the application date.

(C) In addition to documents required in paragraphs (1)(m)(A) and (B) of this section, copies of police reports, parole or probation reports indicating parole or probation officer's name and phone number, and letters of reference.

<p><u>(n) A signed statement or declaration affirming the exempt or non-exempt status of the business.</u> <u>(o) A signed acknowledgement that the contractor understands that if there is ever a change of status from nonexempt to exempt, or from exempt to nonexempt, the contractor must notify the board within 10 days.</u> (n)<u>(p)</u> Independent contractor certification statement and a signed acknowledgement that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee; (e)<u>(q)</u> Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct; and (p)<u>(r)</u> For licenses obtained pursuant to Oregon Laws 2018, chapter 46, sections 1 and 2, and OAR 812-006-0162, forms prescribed by the agency that document and verify qualifying work experience.</p> <p>(2) A complete license application includes but is not limited to:</p> <p>(a) A completed application form as provided in section (1) of this rule;</p> <p>(b) Except as otherwise provided, the new application license fee as required under OAR 812-003-0142;</p> <p>(c) A properly executed bond, letter of credit or assignment of savings as required under OAR 812-003-0152, 812-003-0153, 812-003-0154 or 812-003-0155; and</p> <p>(d) The certification of insurance coverage as required under OAR 812-003-0200.</p> <p>(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.</p> <p>(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.</p>	
<p>812-003-0280 Renewal and Reissue of License</p>	<p>Implements SB 228 §4 (2) provisions.</p> <p>Addition of requirement that applicants for new and renewed</p>

<p>Each entity must complete a form prescribed by the agency. Notwithstanding OAR 812-003-0300(4), a license may be renewed or reissued upon:</p> <p>(1) The applicant's completion of the renewal form or application form prescribed by the agency including, but not limited to, the information provided in OAR 812-003-0260;</p> <p>(2) Payment of the fee or fees,</p> <p>(3) Receipt of the required certification of insurance coverage or other evidence of insurance, and</p> <p>(4) Receipt of a commercial and/or residential bond, letter of credit or cash deposit. If it appears to the agency that the required letter of credit or cash deposit has terminated or expired, the applicant must submit a new bond, letter of credit or cash deposit.</p> <p><u>(5) Receipt of a signed statement or declaration affirming the contractor's status as exempt or non-exempt under ORS 701.035(2)(b).</u></p> <p><u>(6) Receipt of a signed acknowledgement that the contractor understands that if there is a change of status from nonexempt to exempt, or from exempt to nonexempt, the contractor must notify the board within 10 days.</u></p>	<p>licenses include a declaration verifying the exempt or non-exempt status of the business.</p>
<p>812-003-0290 License Renewal, Reissue, New Issue; Effective Dates; Term</p> <p>(1) Except as provided in section (3) of this rule, a completed renewal or reissue application required under OAR 812-003-0260 shall be on file with the agency before a license may be renewed or reissued.</p> <p>(2) In order to obtain a renewed or reissued license, a contractor must provide the following:</p> <p>(a) A completed application form;</p> <p>(b) Proof of insurance;</p> <p>(c) A commercial or residential bond, or both (as indicated by the contractor's endorsement(s));</p> <p>(d) Where authorized by ORS 701.088, a letter of credit or cash deposit in lieu of the bond; and</p> <p>(e) An application fee.</p> <p><u>(f) A signed statement or declaration affirming the contractor's status as exempt or non-exempt.</u></p> <p><u>(g) A signed acknowledgement that the contractor understands that if there is a change of status from nonexempt to exempt, or from exempt to nonexempt, the contractor must notify the board within 10 days.</u></p> <p>(3) If agency error causes the delayed receipt of the required documents or fee, the agency may renew or reissue the license with an effective date before the date on which all</p>	<p>Implements SB 228 provisions.</p> <p>Addition of requirement that applicants for new and renewed licenses include a declaration verifying the exempt or non-exempt status of the business.</p>

<p>requirements were satisfied. Otherwise, all documents and fees must be received by the agency before the agency may renew or reissue the license.</p> <p>(4) If a contractor satisfies all requirements for license renewal before the expiration date:</p> <p>(a) The license is renewed; and</p> <p>(b) The effective date of the license is the expiration date.</p> <p>(5) If a contractor continuously maintains a bond and insurance and satisfies all requirements for renewal within two years after the expiration date:</p> <p>(a) The license is renewed and backdated; and</p> <p>(b) The effective date of the license is the expiration date.</p> <p>(6) If a contractor fails to continuously maintain a bond or insurance but satisfies all requirements for renewal within two years after the expiration date:</p> <p>(a) The license is reissued; and</p> <p>(b) The effective date of the license is the date when all requirements for reissue are met.</p> <p>(7) If a contractor satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The contractor must apply for a new license under OAR 812-030-0260.</p> <p>(8) Licenses will be reissued or renewed for a period of two years.</p>	
<p>812-003-0321 Notification of Change of Independent Contractor Status <u>Non-Exempt to Exempt License Status</u></p> <p>(1) When a contractor's license status changes from nonexempt to exempt or from exempt to nonexempt, the contractor must notify the board. The contractor must file a Notification of Changed Contractor License Status within 3010 days of the effective date of the change.</p> <p>(2) There is no charge to file the notification required under this rule.</p>	<p>Implements SB 228</p> <p>Changes requirement that licensees notify the board of a change to employee status from within 30 days to 10 days.</p>
<p>812-003-0390 Revocation, Suspension or Conditioning of a License</p> <p>(1) Except as provided in section (2) of this rule, if the agency issues a final order, arbitration award, or determination directing a licensee to pay monetary damages <u>or, if the licensee enters into a settlement agreement with another person under ORS 701.145,</u> and the licensee or the licensee's surety fails to pay the order, award, <u>settlement,</u> or determination in full, the agency will revoke, suspend, <u>condition,</u> or refuse to issue or reissue a license.</p>	<p>Implements SB 228</p> <ul style="list-style-type: none"> • Gives the board the ability to condition a license. • Adds failure to comply with the terms of a settlement agreement to list of reasons the board may revoke, suspend, condition or refuse to issue a license.

<p>(2) Section (1) of this rule shall not apply if the licensee submits proof to the agency that:</p> <p>(a) A United States Bankruptcy Court issued an automatic stay under Title 11 of the United States Bankruptcy Code and that stay is currently in force; or</p> <p>(b) The order, award or determination described in section (1) of this rule arises from a debt that:</p> <p>(A) Is included in an order of discharge issued by a United States Bankruptcy Court; or</p> <p>(B) Is included in a chapter 11 plan and order conforming the plan issued by a United States Bankruptcy Court that prohibits the agency from revoking, suspending, or refusing to issue or reissue the licensee's contractor's license and the licensee is in compliance with the terms of the plan and order.</p> <p>(3) The agency shall revoke, suspend, <u>condition</u>, or refuse to issue or reissue a license under section (1) of this rule if:</p> <p>(a) The agency previously was prevented from revoking or suspending a license or was required to issue or reissue a license under section (2) of this rule; and</p> <p>(b) The licensee's bankruptcy discharge is revoked or the bankruptcy stay is lifted.</p>	
<p>812-004-1210 Address of Complainant and Respondent</p> <p>(1) All communications directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.</p> <p>(2) A party must notify the agency in writing within 10 days of any change in the party's address, <u>email address</u>, withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.</p> <p>(3) Following initial notification of an accepted complaint, communications may be made by regular mail or email.</p>	<p>Implementation of SB 228</p> <p>Allows the agency to modernize operations and ensure consistent regulatory enforcement. This change will allow the DRS section to communicate with parties via email or regular mail.</p>
<p>812-005-0100 Notice of Intent to Take Action</p> <p>Except as provided under authority of ORS 701.098(4), if the agency intends to revoke, <u>condition</u> or suspend a license, or assess a civil penalty, it shall issue and serve on the respondent a notice of intent to take an action, giving the</p>	<p>Implements SB 228</p> <p>Gives the board the ability to condition a license.</p>

<p>opportunity for hearing. For cases the agency determines as potentially complex, unique or otherwise significant, the notice may include the statement that an answer to the assertions or charges will be required.</p>	
<p>812-005-0140 Emergency Suspension</p> <p>Effective January 1, 20082024, the Administrator of the Board may immediately suspend or refuse to renew a license without a prior hearing, in accordance with ORS 701.098(4), in cases where the Administrator of the Board has in its possession a prima facie case of a wrongful act as described in 701.098(4)(a)(A)–(EG) having been committed by a contractor and upon a finding by the Administrator that the contractor is a serious danger to the public welfare. The respondent shall be entitled to a hearing on the Administrator’s action if the respondent requests such a hearing within 90 days after the date of the notice to the respondent, as provided in 701.098(4)(b).</p>	<p>Implements SB 228</p> <p>Housekeeping amendments only</p>
<p>812-005-0160 <u>Failure to Pay a Civil Penalty or the financial portion of a Settlement Agreement</u></p> <p>(1) The agency may revoke, suspend, <u>condition</u>, or refuse to issue or reissue the license of any contractor who fails to pay on demand a civil penalty which has become due and payable.</p> <p>(2) <u>The agency may revoke, suspend, condition or request to issue or reissue the license of any contractor who fails to pay upon demand the financial portion of any settlement agreement with another person, entered into under OR 701.145, which has become due and payable. The agency will also take into consideration the failure to abide by any non financial terms of a settlement agreement.</u></p>	<p>Implements SB 228</p> <ul style="list-style-type: none"> • Gives the board the ability to condition a license. • Adds failure to comply with the terms of a settlement agreement to list of reasons the board may revoke, suspend, condition or refuse to issue a license.
<p>812-005-0250 Repeal of Increased Bond, Letter of Credit or Cash Deposit Requirement</p> <p>(1) Under ORS 701.068 or 701.088 after three years of operating under the increased bond, letter of credit or cash deposit, an applicant or licensee may submit a written request to the agency to be relieved of that obligation after demonstrating three full years of acceptable business practices while having posted the increased bond, letter of credit or cash deposit.</p>	<p>Implements SB 228</p> <ul style="list-style-type: none"> • Adds payment of settlement agreement to list of considerations <p>Minor housekeeping and renumbering</p>

<p>(2) Petitions for return to normal bond, letter of credit or cash deposit requirements under ORS 701.068 or 701.088 must be made in writing and delivered to the agency. The petition should address each requirement set forth in section (3) of this rule.</p> <p>(3) The agency shall consider the applicant's or licensee's petition. The agency shall grant the petition for return to a normal bond if, within three-years period in which the increased bond was in effect, applicant or licensee satisfies all of the following requirements.</p> <p>(a) The applicant or licensee paid the financial portions of any Dispute Resolution Services final orders, <u>settlement agreements</u>, arbitration awards and determinations within thirty (30) days of its issuance. The applicant or licensee must also have complied with any and all non-financial provisions contained within said orders, awards or settlement agreements.</p> <p>(b) The applicant or licensee paid unpaid construction related court judgments issued against the applicant or licensee.</p> <p>(c) The agency did not issue any enforcement final orders against the applicant or licensee.</p> <p>(d) There were no criminal convictions for any of the crimes set forth in ORS 701.098(iL) entered against the applicant or licensee, its owners or officers.</p> <p>(4) If the applicant or licensee fails to satisfy all of the conditions set forth in section (3), the agency will require the applicant or licensee to maintain the increased bond for an additional three years from the date of the agency's decision. After that three-year period, the applicant or licensee may again petition to return to a normal bond.</p> <p>(5) The agency shall notify the licensee or applicant in writing of the agency's decision within 30 days of receiving the petition.</p> <p>(6) If the agency denies the petition, the agency shall notify the licensee or applicant of the reasons for the denial. The licensee or applicant may seek judicial review of the agency's denial as an order in other than a contested case.</p>	
<p>812-005-0280 Fitness Standards</p> <p>(1) In considering whether to revoke, suspend, condition, or refuse to issue a license pursuant to ORS 701.098(1)(i)(L)(A)-(I), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting.</p> <p>(a) Fitness to engage in construction contracting includes, but is not limited to the ability to:</p>	<p>Implements SB 228</p> <ul style="list-style-type: none"> • Gives the board the ability to condition a license. • Adds failure to comply with the terms of a settlement agreement to list of factors related to fitness standards. •

(A) Refrain from violent, threatening, intimidating or sexually predatory behavior;
(B) Refrain from dishonest or fraudulent conduct; or
(C) Be financially responsible.

(b) Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(c) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information ~~in order~~ for the Board to conduct a criminal background check as authorized by 701.098(1)(~~iL~~)(A)-(I). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(d) Failure to provide requested information in (1)(c) of this section may result in the denial of a license.

(2) The agency may revoke, suspend, **condition** or refuse to issue a license if the applicant, licensee, or an owner, officer or responsible managing individual of the applicant or licensee demonstrates a lack of financial responsibility pursuant to ORS 701.098(2) and 701.102(2)(d).

(a) Lack of financial responsibility is evidenced by failure to pay a final order, arbitration award, **settlement agreement with another person**, or determination of the board, issued under ORS 701.145 or 701.146, where the final order, arbitration award, **settlement agreement with another person**, or determination, either alone or combined with any other unpaid final order, arbitration award, **settlement agreement with another person**, or determination, exceeds the amount of the applicable bond and the final order, arbitration award, **settlement agreement with another person**, or determination was issued against:

(i) The applicant or licensee; or

(ii) A business in which the owner, officer or responsible managing individual of the applicant or licensee is, or was, an owner, officer or responsible managing individual during the work period in which the business' obligation giving rise to the final order, arbitration award, **settlement agreement with another person**, or determination arose or was incurred.

(iii) As used in subsection (a) of this rule, "officer" includes any person listed in ORS 701.005(11) or OAR 812-002-0533.

<p>(b) Lack of financial responsibility is evidenced by failure to pay a civil penalty final order of the Director, Department of Consumer and Business Services, issued under ORS 654.086.</p> <p>(c) Lack of financial responsibility is evidenced by failure to pay a judgment or civil penalty arising from construction activities within the United States, regardless of the fact that the judgment of civil penalty has not yet become final by operation of law.</p> <p>(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, condition, or refuse to issue a license if a contractor engages in conduct that harms a consumer by:</p> <p>(a) Arranging for or undertaking work as a contractor that:</p> <p>(A) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;</p> <p>(B) The work causes damage to the consumer or to the consumer's property; and</p> <p>(C) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.</p> <p>(4) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0160 and 437-001-0165 for a fifth or subsequent repeat violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.</p> <p>(5) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0175 for a willful or egregious violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.</p>	
<p>812-009-0340 Agency Representation by Officer or Employee</p> <p>(1) Subject to the approval of the Attorney General as provided in ORS 183.452, agency officers and employees may appear, but not make legal argument, on behalf of the agency in the following types of hearings conducted by the agency:</p> <p>(a) Hearings involving the possible imposition of civil penalties for violations of statutes or regulations;</p> <p>(b) Hearings involving refusals to issue, reissue or renew, conditions, or suspensions, which will be lifted</p>	<p>Implements SB 228</p> <ul style="list-style-type: none"> • Gives the board the ability to condition a license. • Adds failure to comply with the terms of a settlement agreement to list violations. • NOTE: Agency will need to work with DOJ to update our lay representative agreement as well.

upon correction of a deficiency, payment of a penalty or payment of a construction debt, based upon:

- (A) ORS 701.098(4)(a)(A) (no bond);
- (B) ORS 701.098(4)(a)(B) (no insurance);
- (C) ORS 701.098(4)(a)(F) (unpaid construction debt);
- (D) ORS 701.102 (unpaid construction debt);
- (E) ORS 701.106, where the violation is based on a final order issued by:
 - (i) Department of Consumer and Business Services, Building Codes Division;
 - (ii) Department of Consumer and Business Services, Workers' Compensation Division;
 - (iii) Department of Consumer and Business Services, Oregon-OSHA,
 - (iv) Employment Department;
 - (v) Department of Revenue; or
 - (vi) Landscape Contractors Board.
- (F) Failure to pay an outstanding obligation, as required by OAR 812-005-0280(2);
- (G) Failure to obtain or maintain an increased bond, as required by ORS 701.068(5) or (6).
- (H) Failure to provide information as required under ORS 701.046 and OAR 812-003-0260.
- (I) Failure to comply with the terms of a settlement agreement entered into under ORS 701.145.**

(2) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes argument on:

- (A) The jurisdiction of the agency to hear the contested case;
- (B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and
- (C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual argument or arguments on:

- (A) The application of the statutes or rules to the facts in the contested case;
- (B) Comparison of prior actions of the agency in handling similar situations;
- (C) The literal meaning of the statute or rules directly applicable to the issues in the contested case;

<p>(D) The admissibility of evidence; (E) The correctness of procedures being followed in the contested case hearing.</p>	
<p>812-003-0171 Bond, Letter of Credit or Cash Deposit</p> <p>For all new and renewal license applications, a surety bond as required under ORS 701.068, or a surety bond, letter of credit or cash deposit as required under ORS 701.088, must be in one of the following amounts:</p> <p>(1) Residential General Contractor — \$20,000 <u>\$25,000</u></p> <p>(2) Residential Specialty Contractor — \$15,000 <u>\$20,000</u></p> <p>(3) Residential Limited Contractor — \$15,000 <u>\$20,000</u></p> <p>(4) Residential Developer — \$20,000 <u>\$25,000</u></p> <p>(5) Residential Locksmith Services Contractor — \$15,000 <u>\$20,000</u></p> <p>(6) Home Inspector Services Contractor — \$15,000 <u>\$20,000</u>.</p> <p>(7) Home Services Contractor — \$15,000 <u>\$20,000</u></p> <p>(8) Home Energy Performance Score Contractor — \$15,000 <u>\$20,000</u></p> <p>(9) Residential Restoration Contractor — \$15,000 <u>\$20,000</u></p> <p>(10) Commercial General Contractor Level 1 — \$75,000 <u>\$80,000</u></p> <p>(11) Commercial Specialty Contractor Level 1 — \$50,000 <u>\$55,000</u></p> <p>(12) Commercial General Contractor Level 2 — \$20,000 <u>\$25,000</u></p> <p>(13) Commercial Specialty Contractor Level 2 — \$20,000 <u>\$25,000</u></p> <p>(14) Commercial Developer — \$20,000 <u>\$25,000</u></p> <p>(15) Construction Flagging Contractor — \$20,000 <u>\$25,000</u></p>	<p>Implements HB 2922</p>