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NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 808
LANDSCAPE CONTRACTORS BOARD

FILED

02/23/2023 1:42 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Clarifies the date work completed and permits obtained by a general or homeowner.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/21/2023 5:00 PM

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

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

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NEED FOR THE RULE(S)

Clarifies the date work completed to include the pass of any and all final inspections and that permits may be obtained by a general contractor or a homeowner and that landscape contracting business must confirm those permits prior to the performance of the landscape work that required the permit. Clarifies the date work completed to include the pass of any and all final inspections.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

LCB: oregon.gov/lcb and lcb.info@lcb.oregon.gov

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The amendment of these rules will not affect racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact

COST OF COMPLIANCE:

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

No other agencies will be affected by the rule amendments. The effect on small businesses will only be to LCB licensees who perform landscape work that requires a permit - estimate could be 1,500 small businesses; the expected cost to a small business required to comply with the rule does not change the current requirement; and there will be no cost for professional services, equipment, labor or administration costs to those small businesses.

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

Several board members are small business owners

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

The Board acts as its own Rule Advisory Committee.

RULES PROPOSED:

808-002-0280, 808-003-0126

AMEND: 808-002-0280

RULE SUMMARY: Clarifies the date work completed to include the pass of any and all final inspections.

CHANGES TO RULE:

808-002-0280

Date Work Completed ¶¶

(1) Except as provided in subsection (24) of this rule, the phrase "Date Work Completed" means:¶¶

(a) The date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or¶¶

(b) The date the landscape contracting business ceased work, if the landscape contracting business fails to substantially fulfill the provisions of the contract.¶¶

~~(2) If no landscape work is performed, the date work completed is considered~~The phrase "date work completed" includes the passing of any and all final inspections required by the local building department as to work for which the landscape contracting business:¶¶

(a) is required by OAR 808-003-0126(1) to obtain any permit;¶¶

(b) has entered into a verbal or written contract to pull required permits; or,¶¶

(c) is required by local ordinance to pull all required permits.¶¶

(3) If a permit was required to be pulled by the landscape contracting business, or the landscape contracting business failed to confirm in writing that necessary permits were obtained by the property owner or general contractor, and any prior inspections were unsuccessful - meaning another final inspection is still required - then the work will not be considered substantially complete.¶¶

(4) If no landscape work was performed under the contract, then the phrase "date work completed" refers to whichever of the following events occurred last:¶¶

(a) the date of that payment, under the terms of the contract was made;¶¶

(b) the date that a written or verbal proposal, which was later accepted as a contract, or contract date, whichever occurs last was made; or¶¶

(c) the contract date.¶¶

(5) Upon the effective date of the 2023 rule amendments, the provisions of this rule will apply to:¶¶

(a) all claims that remain open at the Board, and¶¶

(b) all claims received after the effective date of the 2023 rule amendments.¶¶

(6) The 2023 amendments to this rule will not apply to claims cases closed prior to the effective date of this rule.

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

Statutes/Other Implemented: ORS 671.710

AMEND: 808-003-0126

RULE SUMMARY: Clarifies permits may be obtained by a general contractor or a homeowner and that landscape contracting business must confirm those permits prior to the performance of the landscape work that required the permit.

CHANGES TO RULE:

808-003-0126

Permits and Other Requirements for Work Performed by a Landscape Contracting Business ¶¶

(1) Prior to the performance of work ~~requiring LCB licensure, the~~ landscape contracting business must obtain a permit, ~~if required for the proposed work, if a permit is required, or confirm in writing that the property owner or general contractor has already pulled the required permit.~~ This includes but is not limited to the installation of:¶¶

- (a) A backflow assembly for irrigation systems or water features;¶¶
- (b) A retaining wall, driveway, deck, fence, walkway, arbor, landscape edging or patio;¶¶
- (c) Low voltage wiring for irrigation systems or landscape lighting;¶¶
- (d) Plantings on structures; and¶¶
- (e) Drainage systems for landscaping work.¶¶

(2) Prior to the performance of landscaping work on a structure the landscape contracting business must confirm that the structure has been properly engineered and municipal approval has been obtained in writing or by issuance of a municipal permit for construction.¶¶

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by a licensed landscape construction professional who holds a backflow license and who is either an employee or owner of a landscape contracting business. The landscape construction professional or landscape contracting business shall obtain all required permits prior to the installation of the backflow assembly, or confirm in writing that the property owner or general contractor has already pulled the required permits, and the landscape construction professional shall install the backflow assembly in conformance with the applicable code requirements.¶¶

(b) If a landscape construction professional or landscape contracting business fails to obtain permits to tap into the potable water system for the installation of backflow assemblies for irrigation or ornamental water feature, or fails to confirm in writing that necessary permits have been obtained by the property owner or general contractor, or fails to comply with applicable code requirements, the Board, in addition to any other remedy, may suspend, condition or revoke the landscape construction professional and/or landscape contracting business license.¶¶

(4) The preparation of plans and drawings for a landscape irrigation system may only be prepared by a landscape construction professional if that professional:¶¶

- (a) Holds a license that authorizes the installation of irrigation systems as stated in OAR 808-003-0040 of this rule; and¶¶
- (b) Meets the employment requirements of ORS 671.570(1)(d); or¶¶
- (c) Meets any of the alternative experience qualifications listed under OAR 808-003-0025.¶¶

(5) A landscape contracting business shall not perform defective work as defined in OAR 808-002-0320. Pursuant to ORS 671.610(1)(c) and ORS 671.997(1) the agency may revoke or suspend a landscape construction professional license or landscape contracting business license or both licenses, and may assess a civil penalty against either licensee if work performed by the landscape contracting business has been determined to be defective work as defined in OAR 808-002-0320.¶¶

(6) Upon the effective date of the 2023 rule amendments, the provisions of this rule will apply to:¶¶

- (a) all claims that remain open at the Board, and¶¶
- (b) all claims received after the effective date of the 2023 rule amendments.¶¶

(7) The 2023 amendments to this rule will not apply to claims cases closed prior to the effective date of this rule.

Statutory/Other Authority: ORS 670.310, ORS 671.670

Statutes/Other Implemented: ORS 671.310, ORS 671.595