

2011 Agency Legislative Concept Book

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Oregon

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LC 640 96600-001

Legislative Concept (LC) 640 provides for one member of the Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) to be a registered professional photogrammetrist. In keeping the total members of OSBEELS to 11, LC 640 also reduces the number of Board members that must be registered professional engineers.

As a result of the passage of Senate Bill (SB) 55 during the 2005 Legislative Session, OSBEELS gained authority to regulate the practice of and persons practicing photogrammetric mapping; photogrammetrists. Currently, the Oregon Revised Statute (ORS) 672.240 does not include a registered professional photogrammetrist as a member of the Board. Therefore, LC 640 includes a member to be registered as a professional photogrammetrist. However, if a qualified individual is not available, LC 640 provides that the Governor may appoint either a registered professional engineer or a registered professional land surveyor instead.

There should be no fiscal impact to this proposed legislation.

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LC 640
96600-001
8/3/10 (CDT/ps)

D R A F T

SUMMARY

Provides for one member of State Board of Examiners for Engineering and Land Surveying to be registered photogrammetrist. Reduces number of board members that must be registered professional engineers.

A BILL FOR AN ACT

1
2 Relating to the composition of the State Board of Examiners for Engineering
3 and Land Surveying; creating new provisions; and amending ORS 672.240.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 672.240 is amended to read:

6 672.240. (1) The State Board of Examiners for Engineering and Land Sur-
7 veying shall operate as a semi-independent state agency subject to ORS
8 182.456 to 182.472 for the purpose of carrying out ORS 672.002 to 672.325. The
9 board shall consist of 11 members appointed by the Governor as follows:

10 (a) Two members shall be members of the general public.

11 (b) Two members shall be registered professional land surveyors.

12 (c) [*Six*] **Five** members shall be registered professional engineers.

13 (d) One member shall be registered both as a professional engineer and
14 as a professional land surveyor. However, if a qualified individual is not
15 available, the Governor may appoint either a registered professional engineer
16 or a registered professional land surveyor.

17 (e) **One member shall be a registered photogrammetrist. However,**
18 **if a qualified individual is not available, the Governor may appoint**
19 **either a registered professional engineer or a registered professional**
20 **land surveyor.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) The Governor shall appoint members to the board so that there is at
2 least one member of the board from each congressional district in this state.

3 (3) Each engineer, [and] land surveyor **or photogrammetrist** member of
4 the board shall have been:

5 (a) A resident of this state for at least three years immediately preceding
6 appointment; and

7 (b) Practicing as a registered professional engineer, [or as a] registered
8 professional land surveyor **or registered photogrammetrist** for at least five
9 years since the date of the individual's initial registration.

10 (4) The board shall elect biennially from among its members a president
11 and vice president for the ensuing biennial term.

12 **SECTION 2. The amendments to ORS 672.240 by section 1 of this**
13 **2011 Act do not reduce or terminate the term of service of any regis-**
14 **tered professional engineer serving on the State Board of Examiners**
15 **for Engineering and Land Surveying immediately prior to the effective**
16 **date of this 2011 Act. Except for the position described in ORS 672.240**
17 **(1)(d), the Governor shall appoint a person described in ORS 672.240**
18 **(1)(e) to the first available position on the board that immediately**
19 **prior to the effective date of this 2011 Act was held by a registered**
20 **professional engineer. Notwithstanding ORS 672.240 (3)(b), the person**
21 **-serving the initial term of appointment as a photogrammetrist mem-**
22 **ber of the board may have less than five years of experience as a reg-**
23 **istered photogrammetrist.**

24



November 2, 2010

Problem:

The Oregon Production Investment Fund (OPIF) and the Greenlight Oregon Labor rebate both sunset January 1, 2012.

Solution:

Extend the sunset date to January 1, 2017 in order to continue to create jobs and keep industry professionals employed.

Problem:

Oregon loses many production dollars to other states with more competitive incentive programs. The Oregon cap of \$7.5million tax credits that fund the OPIF program limits the state in the number and size of film productions that can be recruited each year.

Solution:

Increase the OPIF cap to \$20 million per annum. OPIF is a proven creator of increased production and jobs in Oregon. The fund has generated above average paying jobs and these, in turn, return monies to the General Fund and local governments. Increasing OPIF will attract millions more production dollars as was clearly illustrated when Oregon increased the OPIF cap from \$1million per fiscal year to \$5million. Due to this increase, the Film Office was able to recruit \$41.3million in incentivized spending, representing a 117% increase over the previous calendar year and essentially, “reversing the decline it experienced between 2002 and 2005.” *EcoNorthwest, 2007.*

Problem:

The OPIF 10% labor rebate for employee salaries, wages and benefits is smaller than the offerings in many other US states.

Solution:

Increase the labor cap to 20% of Oregon resident wages. OPIF’s growth has created many much-needed jobs and has generated a growing and skilled crew base has the capability to mentor local trainees that further grows the crew base and in doing so will attract future media productions .

“The entertainment industry may be more willing to launch a project in, or bring post-production work to an area where a skilled technical workforce already exists. By expanding training opportunities and integrating film and media arts education in schools, afterschool programs, and community colleges, states are helping ensure the availability of highly skilled workers.” *NGA Center for Best Practices, 2009.*

For more information please contact: Vince Porter, Executive Director, Oregon Film & Video Office, 503-229-5832

LC 639
95100-001
10/27/10 (CMT/ps)

DRAFT

SUMMARY

Increases maximum reimbursement from Oregon Production Investment Fund for film or television production for certain films. Applies to films starting principal photography on or after January 1, 2011.

Limits total reimbursements to local filmmakers for fiscal year. Increases maximum total tax credits for certified film production development contributions to Oregon Production Investment Fund.

Extends sunset on film production labor rebate certificates.

Extends sunset on tax credits for certified film production development contributions to Oregon Production Investment Fund.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

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Relating to film production; creating new provisions; amending ORS 284.367, 284.368 and 315.514 and section 77, chapter 736, Oregon Laws 2003; and section 1a, chapter 559, Oregon Laws 2005; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 284.367 is amended to read:

284.367. (1) The Oregon Production Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Production Investment Fund shall be credited to the fund.

(2) Moneys in the Oregon Production Investment Fund shall consist of:

- (a) Amounts donated to the fund;
- (b) Amounts appropriated or otherwise transferred to the fund by the Legislative Assembly;
- (c) Other amounts deposited in the fund from any source; and

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (d) Interest earned by the fund.

2 (3) Ninety-five percent of moneys in the fund are continuously appropri-
3 ated to the Oregon Business Development Department for the purposes of
4 making:

5 (a) Reimbursements to filmmakers under ORS 284.368;

6 (b) Payments to a tax credit marketer for marketing services provided by
7 the marketer as described in ORS 284.369; and

8 (c) Refunds described in ORS 315.514 (6).

9 (4) Five percent of moneys in the fund are continuously appropriated to
10 the department for the purpose of making reimbursements to local
11 filmmakers under ORS 284.368 (3). **Total reimbursements to local**
12 **filmmakers may not exceed \$500,000 in a fiscal year.**

13 (5) Expenditures from the fund are not subject to ORS 291.232 to 291.260.

14 **SECTION 2.** ORS 284.368 is amended to read:

15 284.368. (1) As used in this section:

16 (a) "Actual Oregon expenses" means the costs paid in Oregon for princi-
17 pal photography, production or postproduction in Oregon of a film, including
18 but not limited to the purchase or rental cost of equipment, food, lodging,
19 real property and permits and payments made for salaries, wages and benefits
20 for work in Oregon.

21 (b) "Film" means a television movie or one or more episodes of a single
22 television series, or a movie produced for release to theaters, video or the
23 Internet. "Film" does not include the production of a commercial or one or
24 more segments of a newscast or sporting event.

25 (c) "Filmmaker" means a person who owns a television or film production
26 company.

27 (d) "Local filmmaker" means a person who owns a television or film pro-
28 duction company that has its principal place of business in this state.

29 (e) "Resident of this state" has the meaning given that term in ORS
30 316.027.

31 (2)(a) The Oregon Business Development Department may reimburse a

1 filmmaker for a portion of the actual Oregon expenses incurred by the
2 filmmaker.

3 (b) Maximum reimbursement for a single film shall be the total of:

4 (A) 10 percent of payments made for employee salaries, wages and benefits
5 for work done in Oregon, **or 20 percent for employee salaries, wages and**
6 **benefits for work done in Oregon for those employees who are resi-**
7 **dents of Oregon;** and

8 (B) 20 percent of all other actual Oregon expenses.

9 (c) To qualify for reimbursement under this subsection, total actual
10 Oregon expenses for the film must equal or exceed \$750,000.

11 (3)(a) The department may reimburse a local filmmaker for all or a por-
12 tion of the actual Oregon expenses incurred by the local filmmaker.

13 (b) To qualify for reimbursement under this subsection:

14 (A) Total actual Oregon expenses paid for the film must be at least
15 \$75,000 and less than \$750,000;

16 (B) The local filmmaker must have spent 80 percent of the film's payroll
17 on employees who are residents of this state; and

18 (C) The local filmmaker must have employed or contracted with a public
19 accountant certified under ORS 673.040 for the provision of payroll services.

20 (4) Reimbursement under this section shall be made from moneys credited
21 to or deposited in the Oregon Production Investment Fund during the
22 biennium in which the actual Oregon expenses were paid or any prior
23 biennium. A reimbursement may not be made to the extent funds are not
24 available in the fund to make the reimbursement.

25 (5)(a) Total actual Oregon expenses supporting a claim for reimbursement
26 under this section must be verified by the Oregon Film and Video Office. The
27 filmmaker must submit to the office proof of the actual Oregon expenses. The
28 proof must include any documentation that may be required by the office in
29 its discretion to verify the actual Oregon expenses.

30 (b) The office may charge the filmmaker for costs reasonably incurred to
31 verify the actual Oregon expenses, including but not limited to the cost for

1 a review or audit of the supporting documentation by an accountant or au-
2 ditor. The office may require the department to deduct the costs incurred by
3 the office in performing its review or audit from any reimbursement made
4 to the filmmaker under this section.

5 (c) The office may adopt rules that establish a procedure for the sub-
6 mission and verification of actual Oregon expenses.

7 **SECTION 3.** ORS 315.514 is amended to read:

8 315.514. (1) A credit against the taxes that are otherwise due under ORS
9 chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or
10 318, is allowed to a taxpayer for certified film production development con-
11 tributions made by the taxpayer during the tax year to the Oregon Pro-
12 duction Investment Fund established under ORS 284.367.

13 (2)(a) The amount of the tax credit shall equal the amount certified for
14 credit by the Oregon Film and Video Office, except that a contribution must
15 equal at least 90 percent of the tax credit.

16 (b) The Oregon Film and Video Office shall adopt rules for determining
17 the amount of tax credit to be certified by the office. The rules shall be
18 adopted in order to achieve the following goals:

19 (A) Subject to paragraph (a) of this subsection, generate contributions for
20 which tax credits of [~~\$7.5~~] \$20 million are certified for each fiscal year;

21 (B) Maximize income and excise tax revenues that are retained by the
22 State of Oregon for state operations; and

23 (C) Provide the necessary financial incentives for taxpayers to make
24 contributions, taking into consideration the impact of granting a credit upon
25 a taxpayer's federal income tax liability.

26 (3) A taxpayer seeking a tax credit under this section shall apply for tax
27 credit certification to the Oregon Film and Video Office on a form supplied
28 by the office. The taxpayer shall include payment of the contribution at the
29 time of application.

30 (4) Contributions made under this section shall be deposited in the
31 Oregon Production Investment Fund.

1 (5)(a) Upon receipt of a contribution, the Oregon Film and Video Office
2 shall issue to the taxpayer written certification of the amount certified for
3 tax credit under this section to the extent the amount certified for tax credit,
4 when added to all amounts previously certified for tax credit under this
5 section, does not exceed [~~7.5~~] **\$20** million for the fiscal year in which cer-
6 tification is made.

7 (b) The Oregon Film and Video Office is not liable, and a refund of a
8 contributed amount need not be made, if a taxpayer who has received tax
9 credit certification is unable to use all or a portion of the tax credit to offset
10 the tax liability of the taxpayer.

11 (6) To the extent the Oregon Film and Video Office does not certify con-
12 tributed amounts as eligible for a tax credit under this section, the taxpayer
13 may request a refund of the amount the taxpayer contributed, and the office
14 shall refund that amount.

15 (7)(a) Except as provided in paragraph (b) of this subsection, a tax credit
16 claimed under this section may not exceed the tax liability of the taxpayer
17 and may not be carried over to another tax year.

18 (b) Any tax credit otherwise allowable under this section that is not used
19 by the taxpayer in a particular tax year may be carried forward and offset
20 against the taxpayer's tax liability for the next succeeding tax year. Any
21 credit remaining unused in the next succeeding tax year may be carried
22 forward and used in the second succeeding tax year, and likewise, any credit
23 not used in that second succeeding tax year may be carried forward and used
24 in the third succeeding tax year but may not be carried forward for any tax
25 year thereafter.

26 (c) A taxpayer is not eligible for a tax credit under this section if the first
27 tax year for which the credit would otherwise be allowed begins on or after
28 January 1, [~~2012~~] **2018**.

29 (8) If a tax credit is claimed under this section by a nonresident or part-
30 year resident taxpayer, the amount shall be allowed without proration under
31 ORS 316.117.

1 (9) A taxpayer who has received a tax credit certificate under this section
 2 may sell the certificate to another taxpayer. The sale is effective only if a
 3 notice of tax credit certificate sale is filed with the Department of Revenue.
 4 The notice shall be filed on a form prescribed by the department on or before
 5 the date on which the income or corporate excise tax return of the buyer for
 6 the first year for which the credit could be claimed is filed or due, whichever
 7 is earlier. The notice form shall include the following information:

- 8 (a) The name and taxpayer identification number of the seller;
- 9 (b) The name and taxpayer identification number of the buyer;
- 10 (c) The amount of the tax credit certificate that is being sold to the buyer;
- 11 (d) The amount of the tax credit certificate that is being retained by the
 12 seller; and
- 13 (e) Any other information required by the department.

14 (10) If requested by the Department of Revenue, the Oregon Film and
 15 Video Office shall supply a list of taxpayers that have obtained tax credit
 16 certification under this section, and for each listed taxpayer disclose:

- 17 (a) The amount of contribution made by the taxpayer; and
- 18 (b) The amount certified for tax credit under this section.

19 (11) If the amount of contribution for which a tax credit certification is
 20 made is allowed as a deduction for federal tax purposes, the amount of the
 21 contribution shall be added to federal taxable income for Oregon tax pur-
 22 poses.

23 **SECTION 4.** Section 1a, chapter 559, Oregon Laws 2005, is amended to
 24 read:

25 **Sec. 1a.** The Oregon Film and Video Office may not issue a qualifying
 26 film production labor rebate certificate under section 1 [*of this 2005 Act*],
 27 **chapter 559, Oregon Laws 2005**, on or after January 1, [2012] 2018.

28 **SECTION 5.** Section 77, chapter 736, Oregon Laws 2003, as amended by
 29 section 1, chapter 913, Oregon Laws 2009, is amended to read:

30 **Sec. 77.** ORS 315.514 applies to tax years beginning on or after January
 31 1, 2005, and before January 1, [2012] 2018, and to tax credit certifications

1 issued by the Oregon Film and Video Office on or after July 1, 2005.

2 **SECTION 6. (1) The amendments to ORS 284.367 by section 1 of this**
3 **2011 Act apply to fiscal years beginning on or after July 1, 2011.**

4 **(2) The amendments to ORS 284.368 by section 2 of this 2011 Act**
5 **apply to films starting principal photography on or after January 1,**
6 **2011.**

7 **(3) The amendments to ORS 315.514 by section 3 of this 2011 Act**
8 **apply to tax credit certifications issued by the Oregon Film and Video**
9 **Office on or after the effective date of this 2011 Act.**

10 **SECTION 7. This 2011 Act takes effect on the 91st day after the date**
11 **on which the 2011 session of the Seventy-sixth Legislative Assembly**
12 **adjourns sine die.**

13



Oregon

Theodore R. Kulongoski, Governor

State Board of Geologist Examiners

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LC 641 (S/HB####)
Committee to be named

Purpose of the legislation:

The legislation would grant immunity from civil liability or administrative proceedings against the Oregon State Board of Geologist Examiners (OSBGE) members, staff, and volunteers while performing duties for the Board.

Background:

The mission of the OSBGE is to ensure the safety and health of Oregonians in regard to the public practice of geology through licensing of professional geologists, responding to complaints involving registrants, and outreach regarding the professional practice.

The Board is composed on four geologic professionals and one non-professional member of the general public. Although the Board does employ an executive assistant, the Board does not employ investigators or compliance reviewers. The Board regularly utilizes volunteers from within the professional geologic community to assist with technical reviews of compliance cases.

The Board averages 10 compliance reviews per, representing less than 1% of the total number of registered professionals in the state. The complaints require considerable investigation by staff and volunteers. The individuals who assist with compliance complaints deserve to know that their voluntary technical assistance with achieving the Board's mission will not result in personal retribution or civil liability.

Proposed Solution:

We propose to follow the lead of other state licensing boards and impart immunity from certain judicial actions to our members, staff, and volunteers. Presently eight other boards offer some level of immunity, these include:

Architects (ORS 671.447), Health Licensing (ORS 676.170, 676.280, 676.300, 688.160, 688.840), Landscape Architects (ORS 671.447), Medical Examiners (ORS 677.335, 677.415, 677.425, 677.492, 677.665), Nursing (ORS 678.126, 678.128), Pharmacy (ORS 475.101, 689.354), Veterinary (ORS 686.440, 686.445, 686.465), Oregon State Bar Association (ORS 9.537, 9.568)

We seek to align the immunity language in the geology registration laws with existing laws related to other licensing boards in the state of Oregon.

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LC 641
96700-001
8/5/10 (CDT/ps)

D R A F T

SUMMARY

Grants immunity from civil liability or administrative proceeding to State Board of Geologist Examiners members, employees, agents, counsel and volunteers with regard to official actions.

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A BILL FOR AN ACT

Relating to the State Board of Geologist Examiners.

Be It Enacted by the People of the State of Oregon:

SECTION 1. In addition to any other immunity provided by law, members of the State Board of Geologist Examiners and any employees, agents, counsel and volunteers serving the board are immune from the imposition of civil liability or the bringing of an administrative proceeding for official actions taken in serving the board.

SECTION 2. Section 1 of this 2011 Act applies to official actions taken on or after the effective date of this 2011 Act.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.



Oregon

Theodore R. Kulongoski, Governor

[Click here for Miscellaneous Table of Contents](#)

Landscape Contractors Board

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www.lcb.state.or.us

SUMMARY LC 643

This legislative concept proposes changes to current statutes that regulate landscape contracting in Oregon in order to create more consumer protection and less confusion for the consumer and the licensed landscape construction industry.

The Problems:

1. Currently licensed landscape contracting businesses can carry one of three different surety bond amounts based upon their statement of the size of landscape projects they will bid on or perform during a year. These bond amounts are \$3000 for projects \$10,000 or less in size; \$10,000 for projects greater than \$10,000 but less than \$25,000; and \$15,000 for projects greater than \$25,000. Businesses can have more than one project being performed at one time which creates a greater risk for the consumers that are being serviced by the business since the bond amount would be spread between all consumers for which work was performed during the same period of time. The consumer is unaware of the bond amount and doesn't understand the increased risk factors and in many cases the landscape contracting business is not fully aware when they need to change the bond amount and consequently enter into contracts without the correct bonding amount. The board is not able to monitor every contract entered into in Oregon and only finds out about insufficient bonding when a claim is filed. Over 50 cases of incorrect bonding have been opened against landscape contracting businesses due to issues created by this stepped bonding process.
2. Currently a properly licensed landscape contracting business has the ability through exemptions from plumbing law and electrical law to test backflow assemblies and install low voltage landscape lighting. It is also a requirement from the Department of Human Services that administers the backflow testing certification that backflow testers be owners or employees of a licensed landscape contracting business in order to test backflow assemblies. This work is not considered "landscaping work" and therefore is not covered by the bond when the work is performed.

The Proposed Solutions Addressed in the Concept:

1. Make a statutory change to require all licensed landscape contracting businesses in Oregon to carry a \$15,000 bond, letter or credit or assignment of savings in order to perform landscape work in Oregon. This is comparable to the Construction Contractors Board law which requires a minimum \$20,000 bond for specialty contractors; and
2. Make a statutory change to have backflow testing and the installation of low voltage landscape wiring be covered by the landscape contracting business's bond when performed by a licensed landscape contracting business. The change does not make this work "landscaping work" but allows the board to access the bond if necessary.

Submitted by
Michael A. Snyder, CLP
LCB Administrator



LC 643
97300-001, 97300-002
10/1/10 (CDT/ps)

D R A F T

SUMMARY

Establishes uniform amount required for landscape contracting business bond, letter of credit or deposit. Specifies types of activities for which landscape contracting business bond or letter of credit must provide coverage.

A BILL FOR AN ACT

Relating to performance securities provided for landscape contracting business work; creating new provisions; and amending ORS 671.690.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 671.690 is amended to read:

671.690. (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 **\$15,000.** [:]

[(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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *job.]*

2 (2) The bond or letter of credit [*required under subsection (1) of this sec-*
3 *tion*] shall be conditioned that the applicant pays:

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

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

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

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

12 **(3) In addition to providing the applicant with coverage for the ac-**
13 **tivities described in ORS 671.520 (1), the bond or letter of credit must**
14 **provide the applicant with coverage for:**

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

17 **(b) The installation repair or maintenance by the landscape con-**
18 **tracting business of backflow assemblies for irrigation systems and**
19 **ornamental water features as described in ORS 447.060; and**

20 **(c) The installation by the landscape contracting business of land-**
21 **scape irrigation control wiring and outdoor landscape lighting as de-**
22 **scribed in ORS 479.940.**

23 **[(3)] (4) In lieu of the surety bond or letter of credit, [*required under***
24 ***subsection (1) of this section, the landscape contracting business*] **the appli-**
25 **cant** may file with the board, under the same terms and conditions as when
26 a bond is filed, a deposit in cash or negotiable securities acceptable to the
27 board.**

28 **[(4)] (5) The bond, letter of credit or deposit [*required by this section*] must**
29 **be continuously on file with the board in the amount required by this section**
30 **and is for the exclusive purpose of payment of final orders and arbitration**
31 **awards in accordance with ORS 671.703. Upon termination or cancellation**

1 of the bond, withdrawal of the deposit or reduction of the bond, letter of
2 credit or deposit to less than the required amount, the licensee shall imme-
3 diately:

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

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

7 *[(5) If the cost of a project makes, or foreseeably will make, a licensee sub-*
8 *ject to a higher bond or letter of credit requirement under subsection (1) of this*
9 *section, the licensee shall immediately file additional bonds, letters of credit*
10 *or deposits to meet the higher requirements.]*

11 (6) The landscape contracting business is responsible for all work [*that*
12 *is*] subject to ORS 671.510 to 671.760 **that is performed or contracted for**
13 **by the business.**

14 **SECTION 2. The amendments to ORS 671.690 by section 1 of this**
15 **2011 Act apply to bonds, letters of credit and deposits filed with the**
16 **State Landscape Contractors Board on or after the effective date of**
17 **this 2011 Act.**

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Oregon

Theodore R. Kulongoski, Governor

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SUMMARY LC 645

This legislative concept creates a requirement that all employees of licensed landscape contracting businesses will be covered by workers compensation when performing work for the business.

The Problem:

Currently the statutes that regulate landscape contracting businesses require landscape contracting businesses to register with the board as exempt or non-exempt independent contractors. A non-exempt independent contractor has employees and an exempt independent contractor does not. The workers compensation law, however, does not require every non-exempt employer to carry workers compensation due to the way the workers compensation law interprets and uses the term "subject worker". Consequently there are employees on jobsites that are not covered by workers compensation which creates significant risk to the consumer and to the employee. Also, landscape contracting businesses are not required to keep the workers compensation coverage on file with the board, so the board has not been able to verify that a non-exempt business has workers compensation coverage. The exempt or non-exempt status has been removed from the board's website since the information has proven to be unreliable.

The Proposed Solution Addressed in the Concept:

Make a statutory change to require all licensed landscape contracting businesses in Oregon that register as non-exempt independent contractors to continuously carry workers compensation coverage regardless of whether or not the employees are subject workers as defined in workers compensation law. Also, if a landscape contracting business registers as an exempt independent contractor and uses the services of a labor leasing or temporary service provider, the business must provide proof of workers compensation coverage to the board before these employees work on a jobsite.

Submitted by
Michael A. Snyder, CLP
LCB Administrator



LC 645
97300-003
10/1/10 (CDT/ps)

D R A F T

SUMMARY

Requires applicant for landscape contracting business license that is nonexempt independent contractor to provide workers' compensation insurance coverage for employees of landscape contracting business.

Requires applicant for landscape contracting business license that is exempt independent contractor and enters into contract with worker leasing company or temporary service provider to ensure that workers supplied to business by leasing company or service provider are covered by workers' compensation insurance.

Requires landscape contracting business that is nonexempt independent contractor to maintain in effect workers' compensation insurance coverage for landscape contracting business.

Requires landscape contracting business that is exempt independent contractor and enters into contract with worker leasing company or temporary service provider to ensure that workers' compensation insurance is maintained in effect for workers supplied to business by leasing company or service provider.

Requires independent contractor that applies for landscape contracting business license and is subject to workers' compensation insurance requirement to include proof of compliance with requirement.

Makes violation of workers' compensation insurance requirement subject to civil penalty, not to exceed \$2,000. Makes violation of workers' compensation requirement or proof of coverage requirement grounds for suspension, revocation or refusal of license.

Changes required content for landscape contracting business license application submitted by independent contractor. Changes requirement for providing State Landscape Contractors Board with requested information during licensing period.

A BILL FOR AN ACT

- 1
2 Relating to landscape contracting businesses; creating new provisions; and
3 amending ORS 671.565 and 671.610.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **Be It Enacted by the People of the State of Oregon:**

2 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made**
3 **a part of ORS 671.510 to 671.760.**

4 **SECTION 2. (1) An applicant for a landscape contracting business**
5 **license that qualifies under ORS 671.525 to be classified as a nonexempt**
6 **independent contractor must provide workers' compensation insurance**
7 **coverage for all employees of the landscape contracting business.**

8 **(2) An applicant for a landscape contracting business license that**
9 **qualifies under ORS 671.525 to be classified as an exempt independent**
10 **contractor, and that has entered into a contract with a worker leasing**
11 **company or temporary service provider for the supplying of workers**
12 **to the landscaping business, must ensure that all leasing company or**
13 **service provider employees supplied for use by the business are covered**
14 **by workers' compensation insurance. As used in this subsection,**
15 **"worker leasing company" and "temporary service provider" have the**
16 **meanings given those terms under ORS 656.850.**

17 **SECTION 3. (1) A landscape contracting business that qualifies un-**
18 **der ORS 671.525 to be classified as a nonexempt independent contractor**
19 **must maintain workers' compensation insurance coverage in effect for**
20 **all employees of the landscape contracting business.**

21 **(2) A landscape contracting business licensee that qualifies under**
22 **ORS 671.525 to be classified as an exempt independent contractor, and**
23 **that has entered into a contract with a worker leasing company or**
24 **temporary service provider for the supplying of workers to the land-**
25 **scaping business, must ensure that workers' compensation insurance**
26 **coverage is maintained in effect for all leasing company or service**
27 **provider employees supplied for use by the business. As used in this**
28 **subsection, "worker leasing company" and "temporary service**
29 **provider" have the meanings given those terms under ORS 656.850.**

30 **SECTION 4. ORS 671.565 is amended to read:**

31 **671.565. (1) Each person applying for a landscape contracting business li-**

1 cense must:

2 (a) Pay to the State Landscape Contractors Board the applicable land-
3 scape contracting business license fee established by the board under ORS
4 671.650.

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

8 (c) Submit the names of all employees who are licensed landscape con-
9 struction professionals.

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

11 (e) File with the board a certificate of public liability, personal injury and
12 property damage insurance covering the work of the landscape contracting
13 business that is subject to ORS 671.510 to 671.760 for an amount not less than
14 \$100,000.

15 (f) Indicate, as set forth in ORS 670.600, the basis under which the appli-
16 cant qualifies as an independent contractor[,] **and the class of independent**
17 **contractor described in ORS 671.525 for which the applicant qualifies.**

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

24 **(b) If an applicant for licensing under this section qualifies to be**
25 **classified as an exempt independent contractor and has entered into**
26 **a contract with a worker leasing company or temporary service pro-**
27 **vider for the supplying of workers to the landscape contracting busi-**
28 **ness, the applicant shall provide evidence satisfactory to the board**
29 **that the applicant has ensured the maintenance of workers' compen-**
30 **sation insurance coverage for all leasing company or service provider**
31 **employees supplied for use by the business. As used in this paragraph,**

1 “worker leasing company” and “temporary service provider” have the
2 meanings given those terms in ORS 656.850.

3 [(2)] (3) At the time of application for a license, for renewal of a license
4 in active status or for return of a license to active status, the [*landscape*
5 *contracting business*] **applicant** shall provide evidence satisfactory to the
6 board that the public liability, personal injury and property damage insur-
7 ance required by [*subsection (1)(e) of*] this section **and any workers’ com-**
8 **pensation required of the applicant under section 2 or 3 of this 2011**
9 **Act** is in effect. During a license period, the [*landscape contracting*
10 *business*] **licensee** shall provide, to the extent required by the board, satis-
11 factory evidence of continued public liability, personal injury and property
12 damage insurance coverage **and, if required under section 3 of this 2011**
13 **Act, workers’ compensation insurance coverage.**

14 **SECTION 5.** ORS 671.610 is amended to read:

15 671.610. (1) In addition to any civil penalty assessed under ORS 671.997,
16 the State Landscape Contractors Board may suspend, revoke or refuse to is-
17 sue or renew the license of a landscape construction professional or land-
18 scape contracting business that does any of the following:

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

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

23 (c) Performs defective work.

24 (d) Furnishes defective materials.

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

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

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

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

1 (i) Fails to comply with section 2 or 3 of this 2011 Act.

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

4 [(i)] (k) Violates a voluntary compliance agreement entered into under
5 ORS 646.605 to 646.652.

6 [(j)] (L) Performs work for which a permit is required under the state
7 building code without obtaining the required permit, if the work results in
8 the filing of a claim with the board.

9 [(k)] (m) Violates a rule or order of the board.

10 [(L)] (n) Refuses to comply with a subpoena issued by the board.

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

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

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

22 [(p)] (r) Fails to comply with the requirements of ORS 652.120.

23 [(q)] (s) Is convicted of a crime under ORS 163.115, 163.185, 163.225,
24 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411,
25 163.415, 163.425, 163.427, 164.055, 164.075, 164.325 or 164.415, provided that the
26 facts supporting the conviction and all intervening circumstances make the
27 determination to suspend, revoke or refuse to issue or renew the license
28 consistent with ORS 670.280.

29 (2) The board may suspend or refuse to renew the license of a landscape
30 construction professional or landscape contracting business without prior
31 hearing if, after investigating and setting forth in writing the facts support-

1 ing the action, the board determines that continued activity by the landscape
 2 construction professional or landscape contracting business poses an immi-
 3 nent threat of serious harm to the public welfare. Facts sufficient to support
 4 a suspension or refusal to renew under this subsection include, but are not
 5 limited to:

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

8 (b) The lack of public liability, personal injury or property damage in-
 9 surance required under ORS 671.565;

10 **(c) The lack of workers' compensation insurance that is required**
 11 **of the licensee under section 3 of this 2011 Act;**

12 [(c)] **(d)** The hiring of employees while licensed as exempt under ORS
 13 671.525;

14 [(d)] **(e)** Conduct as a landscape construction professional or a landscape
 15 contracting business that is dishonest;

16 [(e)] **(f)** Operation of a landscape contracting business that does not em-
 17 ploy at least one licensed landscape construction professional; or

18 [(f)] **(g)** The failure to notify the board of any unpaid court judgment,
 19 arbitration award or administrative agency final order as required by ORS
 20 671.563.

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

31 (4) A person whose license is revoked under this section is not eligible

1 to apply for a license under ORS 671.510 to 671.760 until two years after the
2 effective date of the revocation.

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

- 11 (a) Two sole proprietors;
- 12 (b) One partnership;
- 13 (c) One corporation; or
- 14 (d) One limited liability company.

15 (6) The board shall provide by rule a process and criteria that must be
16 met for restoration of a license that has not been permanently revoked.

17 **SECTION 6. Section 2 of this 2011 Act applies to license applications**
18 **filed with the State Landscape Contractors Board on or after the ef-**
19 **fective date of this 2011 Act. However, section 2 of this 2011 Act does**
20 **not require a worker leasing company or temporary service provider**
21 **to alter any rights or duties of the leasing company or service provider**
22 **under a contract entered into before the effective date of this 2011 Act.**

23 **SECTION 7. Section 3 of this 2011 Act applies to a landscape con-**
24 **tracting business that uses worker leasing company or temporary**
25 **service provider employees on or after the effective date of this 2011**
26 **Act under a contract entered into before, on or after the effective date**
27 **of this 2011 Act. However, section 3 of this 2011 Act does not require**
28 **a worker leasing company or temporary service provider to alter any**
29 **rights or duties of the leasing company or service provider under a**
30 **contract entered into before the effective date of this 2011 Act.**

31



Oregon

Theodore R. Kulongoski, Governor

Landscape Contractors Board

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SUMMARY LC 646

This legislative concept creates the ability for the board to separate the technical competency aspects of a landscape construction professional from the business competency of an owner or managing employee of a landscape contracting business. Both competencies are still required for the formation and operation of a landscape contracting business.

The Problem:

Currently the statutes allow a landscape construction professional to automatically own or be the managing employee of a landscape contracting business. Rightfully so, since a landscape construction professional was required to take the laws, rules and business practice section of the exam on top of the technical competencies. However, not every landscape construction professional desires or needs to own or manage a landscape contracting business. The requirement to pass the laws, rules and business practice section of the exam to become a landscape construction professional limits the ability of this individual to pass this section of the examination, obtain a license and just work as an employee of a landscape contracting business performing the technical aspects that the business requires. The current laws have created a tendency for employers to not encourage or promote the licensing of their employees as landscape construction professionals due to the fear of increased competition.

The Proposed Solution Addressed in the Concept:

Make a statutory change to allow landscape construction professionals to become licensed by passing exams on technical subjects only with a minimal law requirement so how to maintain the landscape construction professional license is understood. If the individual then desires to own or manage a landscape contracting business then the individual would be required to take a board approved course and pass the laws, rules and business practice section of the exam.

The statutory change would also allow the board to potentially accept other forms of examinations administered by others, different than just the board administered written examination, for the demonstration of the minimum competency in the technical functions required for the landscape construction professional license. The board is also supporting this change by creating a comprehensive manual for the technical aspects of the examination and has already created the manual for the owner or managing employee section of the examination.

Submitted by
Michael A. Snyder, CLP
LCB Administrator



LC 646
97300-004
10/1/10 (CDT/ps)

D R A F T

SUMMARY

Requires applicant for initial landscape contracting business license to have owner or managing employee trained and examined on subjects of landscape contracting business practices and related Oregon laws as required by State Landscape Contractors Board rule.

A BILL FOR AN ACT

Relating to landscape contracting business license qualifications; creating new provisions; and amending ORS 671.520, 671.560, 671.565, 671.570, 671.595, 671.614, 671.660 and 671.676.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 671.520 is amended to read:

671.520. 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.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) "Landscape contracting business" means a business that for compen-
 2 sation or with the intent to be compensated arranges, submits a bid, or oth-
 3 erwise offers or contracts, for the performance of activities described in
 4 subsection (1) of this section.

5 (3) "Licensee" means a person that is licensed under ORS 671.510 to
 6 671.760 as a landscape construction professional or landscape contracting
 7 business.

8 (4) **"Managing employee" means a person who, at the time of an**
 9 **application for the issuance or renewal of a landscape contracting**
 10 **business license:**

11 (a) **Is employed in landscaping work only by the applicant; and**

12 (b) **Manages or shares in the management of the applicant, as de-**
 13 **finied by the State Landscape Contractors Board by rule.**

14 ~~[(4)]~~ (5) "Nursery stock" means nursery stock:

15 (a) As defined by ORS 571.005 other than stock grown for commercial re-
 16 sale or reforestation; or

17 (b) As defined by the [*State Landscape Contractors*] board by rule.

18 ~~[(5)]~~ (6) "Ornamental water features" means fountains, ponds, waterfalls,
 19 man-made streams and other decorative water-related constructions as iden-
 20 tified by the board by rule.

21 **SECTION 2.** ORS 671.560 is amended to read:

22 671.560. (1) Except as provided in ORS 671.571 and 671.590, the State
 23 Landscape Contractors Board shall issue a landscape construction profes-
 24 sional license to an applicant who satisfies the requirements of ORS 671.570.

25 (2) The board shall issue a landscape contracting business license to an
 26 applicant who **complies with ORS 671.595 and** satisfies the requirements
 27 of the board.

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

31 (4)(a) The board may issue a limited or specialty license if the applicant

1 is required to have a landscape construction professional license or land-
 2 scape contracting business license but is not qualified or required to be li-
 3 censed for all phases of landscape work.

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

6 (5) A landscape contracting business that qualifies for the exemption de-
 7 scribed in ORS 571.045 shall indicate on its license application or license
 8 renewal application under this section the reasons the business qualifies for
 9 the exemption.

10 **SECTION 3.** ORS 671.565 is amended to read:

11 671.565. (1) Each person applying for a landscape contracting business li-
 12 cense must:

13 (a) Pay to the State Landscape Contractors Board the applicable land-
 14 scape contracting business license fee established by the board under ORS
 15 671.650.

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

19 *[(c) Submit the names of all employees who are licensed landscape con-
 20 struction professionals.]*

21 **(c) Submit the names of all owners and managing employees of the
 22 business and of all employees of the business who are licensed land-
 23 scape professionals. If the applicant is subject to ORS 671.595, the ap-
 24 plication must identify an owner or managing employee who has
 25 obtained the training described in ORS 671.595.**

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

27 (e) File with the board a certificate of public liability, personal injury and
 28 property damage insurance covering the work of the landscape contracting
 29 business that is subject to ORS 671.510 to 671.760 for an amount not less than
 30 \$100,000.

31 (f) Indicate, as set forth in ORS 670.600, the basis under which the appli-

1 cant qualifies as an independent contractor.

2 (2) At the time of application for a license, for renewal of a license in
3 active status or for return of a license to active status, the landscape con-
4 tracting business shall provide evidence satisfactory to the board that the
5 public liability, personal injury and property damage insurance required by
6 subsection (1)(e) of this section is in effect. During a license period, the
7 landscape contracting business shall provide, to the extent required by the
8 board, satisfactory evidence of continued public liability, personal injury and
9 property damage insurance coverage.

10 **SECTION 4.** ORS 671.570 is amended to read:

11 671.570. (1) Each person applying for a landscape construction profes-
12 sional license must:

13 (a) Pay a nonrefundable application fee.

14 (b) Pay an examination fee.

15 (c) Pay to the State Landscape Contractors Board the landscape con-
16 struction professional license fee required by ORS 671.650.

17 (d) Pass an examination, which the board shall offer at least once each
18 six months, to determine the fitness of the applicant for licensing and within
19 10 years before the day the application for a license is made:

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

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

25 (e) Be employed by, or own, a landscape contracting business if perform-
26 ing landscaping work.

27 (2) Notwithstanding subsection (1) of this section, the board may adopt
28 rules:

29 (a) Allowing a person who does not meet the education and experience
30 requirements in subsection (1)(d) of this section to substitute other education
31 and experience that demonstrate the fitness of the person for licensing as a

1 landscape construction professional.

2 **(b) Approving alternative certification programs as a substitute for**
 3 **the examination described in subsection (1)(d) of this section.**

4 **SECTION 5.** ORS 671.595 is amended to read:

5 671.595. *[(1) As used in this section:]*

6 *[(a) "Managing employee" means a person who, at the time of an applica-*
 7 *tion for the issuance or renewal of a landscape contracting business license:]*

8 *[(A) Is employed in landscaping work only by the applicant; and]*

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

11 **[(b)] (1) As used in this section, "owner" means a person who at the**
 12 **time of an application for the issuance or renewal of a landscape contracting**
 13 **business license:**

14 (a) Has an ownership interest in the applicant; and

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

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

23 **(2) An applicant for the original license of a landscape contracting**
 24 **business shall provide the board with proof that at least one owner or**
 25 **managing employee for the business has received training and been**
 26 **examined on the subjects of landscape contracting business practices**
 27 **and Oregon laws affecting landscape contracting businesses. The board**
 28 **shall adopt rules establishing standards for the owner or managing**
 29 **employee training and examination that the applicant must prove un-**
 30 **der this subsection. The board may not establish a standard that re-**
 31 **quires an owner or managing employee to take a total of more than**

1 **16 hours of course work in landscape contracting business or general**
 2 **business practices and Oregon laws affecting landscape contracting**
 3 **businesses. The board shall adopt rules to provide for the examination**
 4 **of owners or managing employees who meet the training requirements**
 5 **established by the board.**

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

9 *[(4) The board shall adopt rules establishing required courses for an owner*
 10 *or managing employee who seeks to qualify the business for a landscape con-*
 11 *tracting business license, but who is not licensed as a landscape construction*
 12 *professional. The courses required by the board shall be designed to educate*
 13 *the owner or managing employee regarding business practices and Oregon laws*
 14 *affecting landscape contracting businesses. The board may not require an*
 15 *owner or managing employee to take a total of more than 16 hours of instruc-*
 16 *tion.]*

17 *[(5)]* (4) *[When adopting rules to carry out subsection (4) of this section,]*
 18 **If the board proposes the adoption of a rule under subsection (2) of this**
 19 **section that requires or allows an owner or managing employee to**
 20 **obtain training by taking a course,** the board shall consider the avail-
 21 ability of courses in the regions of this state. The board shall encourage
 22 course providers to use the most up-to-date technology to make courses
 23 widely available.

24 *[(6)]* (5) A course provider may submit information regarding course ma-
 25 terials, examinations and instructor qualifications to the board for approval.
 26 The board shall approve courses if the course materials, examinations and
 27 instructors meet board requirements **for training in landscape contracting**
 28 **business practices and Oregon laws affecting landscape contracting**
 29 **businesses.** The board shall periodically review approved courses to ensure
 30 continuing compliance with board requirements. The board shall develop and
 31 make available a list of **any approved** providers that offer courses that will

1 enable an owner or managing employee to [*comply with the requirements of*
 2 *subsection (2) of this section*] **qualify the landscape contracting business**
 3 **for licensing.**

4 **SECTION 6.** ORS 671.614 is amended to read:

5 671.614. [*(1) The State Landscape Contractors Board may issue an order*
 6 *placing a landscape contracting business, or any landscape construction pro-*
 7 *fessional that is employed by the landscape contracting business or is a land-*
 8 *scape contracting business owner or officer as defined in ORS 671.607, on*
 9 *probation if three or more claims are filed against the landscape contracting*
 10 *business's bond, letter of credit or deposit within a 12-month period.*]

11 **(1) If three or more claims are filed against the bond, letter of**
 12 **credit or deposit of a landscape contracting business within a 12-month**
 13 **period, the State Landscape Contractors Board may issue orders to**
 14 **place one or more of the following on probation:**

15 **(a) The landscape contracting business;**

16 **(b) Any employee of the business who is a licensed landscape con-**
 17 **struction professional;**

18 **(c) An owner of the business; or**

19 **(d) A managing employee.**

20 **(2) The board may place a landscape contracting business or landscape**
 21 **construction professional on probation under subsection (1) of this section**
 22 **only if the board determines after investigation of the complaints that a**
 23 **significant likelihood exists that continued activity by the landscape con-**
 24 **tracting business or landscape construction professional without board**
 25 **supervision will result in additional claims against the landscape contracting**
 26 **business.**

27 **(3) The board may place an owner or managing employee of a**
 28 **landscape contracting business on probation if the owner or managing**
 29 **employee qualifies the business under ORS 671.595 and fails to sub-**
 30 **stantially participate in the business as determined by board rule.**

31 **[[3]] (4) The board may require as a condition of probation imposed under**

1 this section that *[the]* a landscape construction professional take a board-
 2 approved education course in one or more subjects relating to landscape op-
 3 erations.

4 ~~[(4)]~~ **(5)** The board may require as a condition of probation imposed under
 5 this section that the owner or *[officer]* **managing employee** of the landscape
 6 contracting business take a board-approved education course in one or more
 7 subjects relating to landscape contracting business or general business
 8 practices.

9 ~~[(5)]~~ **(6)** The board may take action to suspend, revoke or refuse to renew
 10 the license of the landscape contracting business, *[or]* landscape construction
 11 professional, **owner or managing employee** if the business, *[or]* profes-
 12 sional, **owner or managing employee** fails to fulfill the conditions of the
 13 probation.

14 **SECTION 7.** ORS 671.660 is amended to read:

15 671.660. (1) The fee for renewal of a license issued under ORS 671.510 to
 16 671.760 shall be paid annually on or before the last day of the month of the
 17 anniversary of issuance.

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

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

25 (4) When a landscape contracting business renews its license, the business
 26 must:

27 **(a)** Submit the names of all employees who are licensed landscape con-
 28 struction professionals[.];

29 **(b)** **Submit the names of all owners and managing employees of the**
 30 **business;**

31 **(c)** **Demonstrate that an owner or managing employee has complied**

1 **with any continuing education requirement adopted by the board; and**

2 **(d) Provide any other information required by the board by rule.**

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

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

7 (b) Demonstrate that the person has complied with the continuing edu-
8 cation requirement adopted by the board.

9 **SECTION 8.** ORS 671.676 is amended to read:

10 671.676. (1) The State Landscape Contractors Board shall adopt rules es-
11 tablishing continuing education requirements for landscape construction
12 professionals **and for landscape contracting business owners and man-**
13 **aging employees. Except as provided in this subsection,** the board may
14 not require landscape construction professionals to take more than [10] **six**
15 **hours of continuing education every year[.] or require landscape con-**
16 **tracting business owners or managing employees to take more than**
17 **four hours of continuing education every year. If a landscape con-**
18 **struction professional is also an owner or managing employee of a**
19 **landscape contracting business, the board may not require the land-**
20 **scape construction professional to take more than 10 hours of contin-**
21 **uing education every year.**

22 (2) The board may approve programs for purposes of continuing education
23 for landscape construction professionals **and for landscape contracting**
24 **business owners and managing employees. The board may** determine the
25 number of hours to be credited to the programs. The board shall ensure that
26 continuing education opportunities for landscape construction professionals,
27 **owners and managing employees** are readily available.

28 (3) Programs approved by the board for continuing education purposes
29 must be designed to directly contribute to the professional competency of
30 landscape construction professionals **or of owners or managing**
31 **employees.** Approved programs may include, but need not be limited to:

1 (a) Professional development programs and technical meetings of profes-
2 sional associations for landscape contracting businesses or for related in-
3 dustries such as pesticide application or irrigation auditing;

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

5 (c) Professional staff training programs by associations of landscape con-
6 struction professionals; and

7 (d) Online or other forms of educational programs.

8 (4) The board may adopt rules establishing grounds for obtaining a waiver
9 of [*the*] continuing education requirements [*for landscape construction pro-*
10 *fessionals*]. The board may not allow a waiver for more than two consecutive
11 years except for a waiver due to military service, retirement, disability, ab-
12 sence from the state, inactive status or extreme hardship.

13 **SECTION 9. (1) The amendments to ORS 671.560 and 671.595 by**
14 **sections 2 and 5 of this 2011 Act apply to applications for the initial**
15 **issuance of a landscape contracting business license that are received**
16 **by the State Landscape Contractors Board on or after the effective**
17 **date of this 2011 Act.**

18 **(2) The amendments to ORS 671.565 and 671.660 by sections 3 and 7**
19 **of this 2011 Act apply to applications for licensing that are received**
20 **by the board on or after the effective date of this 2011 Act.**

21



Oregon

Theodore R. Kulongoski, Governor

Board of Massage Therapists

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The Oregon State Board of Massage Therapist's has developed this narrative summary for your consideration.

LC 642

Prior to this change, there were schools, colleges or universities that were excluded from offering massage therapy classes to students without specific Board approval because they were not designated within legislation. The ability to add this language will offer flexibility to the Board in considering and approving schools who will provide specific educational classes in this field.

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LC 642

96800-001

8/24/10 (MNJ/ps)

D R A F T

SUMMARY

Provides that State Board of Massage Therapists may approve class taken at accredited college or university as certified class for purposes of educational requirements for licensure.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to massage therapists; amending ORS 687.011; and declaring an
3 emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 687.011 is amended to read:

6 687.011. As used in ORS 687.011 to 687.250, 687.895 and 687.991:

7 (1) "Board" means the State Board of Massage Therapists.

8 (2) "Certified class" means a class that is approved by the board and is
9 offered:

10 (a) By a person or institution licensed as a career school under ORS
11 345.010 to 345.450;

12 (b) By a community college and approved by the State Board of Educa-
13 tion;

14 **(c) By an accredited college or university;** or

15 [(c)] **(d)** In another state and licensed or approved by the appropriate
16 agency in that state.

17 (3) "Fraud or misrepresentation" means knowingly giving misinformation
18 or a false impression through the intentional misstatement of, concealment
19 of or failure to make known a material fact or by other means.

20 (4) "Manual" means the use of the hands or the feet, or both, or any part

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 of the body in the performance of massage.

2 (5) "Massage" or "massage therapy" means the use on the human body
3 of pressure, friction, stroking, tapping or kneading, vibration or stretching
4 by manual or mechanical means or gymnastics, with or without appliances
5 such as vibrators, infrared heat, sun lamps and external baths, and with or
6 without lubricants such as salts, powders, liquids or creams for the purpose
7 of, but not limited to, maintaining good health and establishing and main-
8 taining good physical condition.

9 (6) "Massage therapist" means a person licensed under ORS 687.011 to
10 687.250, 687.895 and 687.991 to practice massage.

11 (7) "Practice of massage" means the performance of massage:

12 (a) For purposes other than sexual contact, as defined in ORS 167.002 (5);
13 and

14 (b) For compensation.

15 (8) "Preceptor" means a licensed massage therapist who contracts with
16 an approved school or program of massage to provide direct on-site clinical
17 supervision of a massage student enrolled in a certified class.

18 (9) "Supervision" means:

19 (a) The process of overseeing and directing the training of massage stu-
20 dents as set forth in rules of the board;

21 (b) The process of overseeing and directing a licensee being disciplined
22 by the board; or

23 (c) Voluntary consultation with, and education of, less experienced li-
24 censed massage therapists or practitioners in related fields.

25 (10) "Treatment" means the selection, application and practice of massage
26 or massage therapy essential to the effective execution and management of
27 a plan of care.

28 (11) "Unprofessional or dishonorable conduct" means a behavior, practice
29 or condition that is contrary to the ethical standards adopted by the board.

30 **SECTION 2. This 2011 Act being necessary for the immediate pres-**
31 **ervation of the public peace, health and safety, an emergency is de-**

1 **clared to exist, and this 2011 Act takes effect on its passage.**

2
