

BILL AMENDMENT PROPOSAL

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as proposed.

This amendment allows for modifications in license requirements for subcontractors as it pertains to their ability and rights to perform work as a subcontractor instead of a generalized category of contractor. It includes the responsibilities of other entities involved in contracting to a subcontractor who is not licensed, and the ways it will effect other Oregon laws.

A BILL FOR AN ACT

SECTION 1. ORS 701.055 be amended to read:

701.055. (1) A person may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid license issued by the Construction Contractors Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter. The exception to this is that a person may not undertake, offer to undertake or submit a bid to do work as a subcontractor unless that person has a signed contract with either the general contractor, builder or owner of the location of work. A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a subcontractor unless that partnership, corporation or joint venture has a signed contract under this section. Any person, partnership, corporation or joint venture must register their business with the CCB and be issued a Registration number for the purpose of business with The CCB and performing any work as a subcontractor.

- (a) For the purposes of this section, a Registration number shall be the same as a license number, except that it shall be exempt from insurance, bond, license fees and requirements.
- (b) It is the responsibility of an owner, general contractor or builder to carry insurance and bonds and be properly licensed when employing a non-licensed subcontractor.

(5a) The board shall adopt by rule a form entitled ' Information Notice to Property Owners and General Contractors About Construction Responsibilities' that shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners and general contractor are accepting by subcontracting work to person(s) without insurance or bond and the problems that could develop.

The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Contractual Law and binding agreements as it relates to Oregon Law.

(c) Liability and property damage insurance.

(d) That it is the responsibility of the owner or contractor to ensure that the subcontractor is capable of performing the work involved.

(6) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners and General Contractors About Construction Responsibilities and the statement to be signed by the permit applicant.

(14a) A subcontractor may not perform work subject to this section for an owner of a residential structure or a general contractor or builder without a written contract or if that subcontractor does not have a registration number with the CCB. Failure to have a written contract will not void the contract.

Section 2: 701.035 be amended to read:

701.035 Applicant required to be independent contractor to be eligible for license; classes of licenses; registered; classes of registration. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be eligible for a license or to be registered with the Construction Contractors Board.

(5) The board shall create two classes for registration.

(6) These classes shall comply with the subsections (2) - (4) of this section.

Section 3: 701.065 be amended to read:

701.065 License required to obtain judicial or administrative remedy; exception. (1) Except as provided in subsection (2) of this section, a contractor or subcontractor may not perfect a claim of a construction lien, or commence a claim with the Construction Contractors Board, in arbitration or in any court of this state for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board or was a subcontractor properly registered with the board:

(a) At the time the contractor bid or entered into the contract for performance of the work; and

(b) Throughout more than 75% of the work performed for which compensation is sought.

(4) The subcontractor who perfects such a claim under this section must have had a signed contract with the owner, general contractor or builder to perform the work unless:

(a) it was work in addition to work that was not part of the original contract or architectural renderings provided at the time the contract was signed,

(b) expenses resulting from changes or additions to the original contract or architectural renderings provided at the time the contract was signed,

(c) or other justified expense that occurred as a result of a request made by the owner, general contractor or builder that was not on the original contract or architectural renderings provided at the time the contract was signed including, but not limited to:

(1) The installation of windows or doors,

(2) The installation of hardware as added onto the final, approved

architectural renderings,

(3) The installation of additional fixtures or work performed to install additional fixtures such as the cutting and bracing of walls to install the appropriate sized piping,

(4) The rental of cranes or other machinery used in the installation of the home unless previously agreed upon in the signed contract.

(5) An owner, general contractor or builder may not perfect a claim against a subcontractor for the quality of work performed if that owner, general contractor or builder signed a contract with the subcontractor knowing they were only registered with the CCB except if:

(a) A claim may be brought against a subcontractor who is registered with the CCB for failure to perform work or to have performed work that is substantially below a reasonable level of quality as determined by the CCB or that fails to pass inspection and the subcontractor has refused or is incapable of repairing the work in a timely manner, or has performed work that requires repair by another subcontractor or the contractor themselves. The burden of proof for the repairs is the claimants responsibility and must include receipts, pictures and factual documentation from another contractor or subcontractor.

(6) A subcontractor can bring a claim against a contractor for any of the reasons in this section as long as they are licensed or registered with the CCB or can prove they have done a substantial amount of work, this would include:

(a) An amount of work that is \$500.00 or greater,

(b) They have performed work that passes inspection or have offered to make any small changes necessary to properly pass inspection within 21 days of their claim,

(c) File the appropriate documents and fees to be registered with the CCB within 21 days of performing the work involved in the claim.

(d) If, for any reason, a claim is brought to the CCB by a subcontractor who is not properly registered or who has not provided the appropriate documented evidence such as a signed contract, it is the right of the CCB to grant a claim under the following conditions:

(1) As work was performed, the licensed contractor, owner or builder will have to file the appropriate documents to come into compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax as the claim will be modified for services performed by subcontractors acting as employees of the respondent,

(2) The subcontractor will have to file the appropriate documents to be registered with the CCB and to come into compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax as the claim will be modified for services performed by subcontractors acting as employees of the respondent,

(3) The amount of the claim will be reduced by an amount to pay the CCB for registration fees for the subcontractor and a fee of \$100.00 or 15% of the claim (whichever is greater) for failure to be in compliance with the registration laws regarding subcontractors and work performed as it pertains to this section,

(4) 10% of the costs from the owner, general contractor or builder relating to the employment status of the subcontractors will be come out of the claim amount from the subcontractors,

(5) In the event that the claim is found to be in favor of the respondent, the subcontractors will still be responsible for the fees due to both the respondent and the CCB,

(6) For the purposes of this subsection, the subcontractor is the claimant the entity which directly engaged the services of the subcontractor is the respondent.

(7) In the event a property owner employs the services of a subcontractor who is registered with the CCB and brings a claim against the subcontractor, the CCB can enforce the same penalties against the subcontractor as if the claim was filed by a licensed contractor.

(a) In the case the subcontractor is not registered with the CCB, and an owner of a property engages their services, it is a matter that may only be filed in a Circuit Court in the County in which the services were performed and is not a matter for the CCB.

(b) If a subcontractor has performed work for a property owner or builder who is not registered with the CCB and does not have a bond, the case must be filed in a Circuit Court in the County in which the services were performed and is not a matter for the CCB.

Section 4: 701.085 be amended to read:

701.085 (13) Any subcontractor who performs work as it relates to this section and is registered with the CCB, but has a claim brought against them with the CCB will be financially responsible, in full for any judgments brought against them.

(a) A subcontractor has the right, within 21 days of the final decision to appeal the final judgment.

(b) The respondent may apply for a judgment to obtain the money owed to them by the subcontractor if that subcontractor fails to pay within 30 days.

(14) A subcontractor who is not registered with the CCB may have a suit brought against them in a Circuit Court in the County in which the work was performed.

(a) The subcontractor may be ordered by the Judge in the matter to file the documents and fees with the CCB to become a registered subcontractor and any fees the CCB may impose for a subcontractor who is not registered but has a claim brought against them and loses.

Section 5: 701.102 be amended to read:

701.102 Sanction for past unresolved activity; rules defining ownership of business; probation. (1) The Construction Contractors Board may suspend the license of or refuse to license or register a person if the person, or the owner or holder of a direct or indirect interest in the person, is a business or the owner or holder of a direct or indirect interest in a business that:

Section 6: 701.105 be amended to read:

701.105 (5) Where a subcontractor is registered with the CCB and is not insured but is contracted by a general contractor or builder, it will be the responsibility of the general contractor or builder to carry an insurance policy amount that is equal to the requirements of their position and that of their subcontractors.

(a) In the event suit is brought by a property owner against a general contractor or builder for a defect that came as a result of poor work done by the registered subcontractor, it is the sole responsibility of the general contractor or builder to provide the insurance to cover the claim.

(b) Owners, General Contractors and Builders may not perfect a claim against a registered subcontractor if it is in response to a claim perfected against their insurance. There must be substantial cause, as it pertains to ORS 701.065.

(c) In the event that the subcontractor or general contractor win the suit, both entities may recover a reasonable amount of money spent to defend themselves in this matter.

(d) If the general contractor chooses to assist in the defense of the subcontractor, the general contractor will take priority in the recovery of such money.

(6) In the event a property owner employs the services of a subcontractor who is registered with the CCB and brings a claim against the subcontractor, the CCB can enforce the rules