

House Bill 2369

Sponsored by Representative ANDERSON (at the request of National Fire Sprinkler Association, Oregon Fire Sprinkler Industry Coalition, Oregon Fire District Directors Association, Oregon Fire Chiefs Association, Oregon Fire Marshals Association)

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 introduced**.

Requires person engaging in work as fire protection sprinkler contractor to obtain license from Department of Consumer and Business Services. Imposes bonding, insurance and other requirements on licensed fire protection sprinkler contractor. Exempts persons having two years' experience as fire protection sprinkler contractor on or before January 1, 2007, from bonding, insurance and other requirements if license application is filed on or before January 1, 2008.

Allows municipal enforcement of license, bonding, insurance and other requirements. Makes violation of license, bonding, insurance and other requirements or of department rules regarding fire protection sprinkler contractors subject to civil penalty, not to exceed \$5,000 for each offense or \$1,000 per day for continuing offense.

A BILL FOR AN ACT

1
2 Relating to fire protection sprinklers; creating new provisions; and amending ORS 455.156 and
3 455.895.

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

5 **SECTION 1. As used in this section and sections 2 to 7 of this 2005 Act:**

6 (1) **"Fire protection sprinkler system" means a water supply and piping dedicated exclu-**
7 **sively for the purpose of automatically suppressing or extinguishing fires.**

8 (2) **"Fire protection sprinkler contractor" means a person who for compensation, or with**
9 **the intent to be compensated, arranges, undertakes, offers or submits a bid to:**

10 (a) **Plan, design or lay out a fire protection sprinkler system; or**

11 (b) **Supervise the installation, maintenance, inspection, testing or repair of a fire pro-**
12 **tection sprinkler system.**

13 **SECTION 2. (1) A person may not engage in business as a fire protection sprinkler con-**
14 **tractor unless the person has a fire protection sprinkler contractor license issued by the**
15 **Department of Consumer and Business Services.**

16 (2) **An applicant for a fire protection sprinkler contractor license must submit a com-**
17 **pleted application and submit fees as prescribed by the department by rule. If the person is**
18 **applying for renewal of a license, the person must also meet any continuing education re-**
19 **quirement imposed by the department.**

20 (3) **Licensing under this section is in addition to any other license, certificate, registra-**
21 **tion, permit or other authorization required for engaging in work as a contractor in this**
22 **state.**

23 **SECTION 3. Except as provided in section 4 of this 2005 Act, a person issued a fire pro-**
24 **tection sprinkler contractor license under section 2 of this 2005 Act shall:**

25 (1) **Obtain and maintain during the term of the license a surety bond providing coverage**
26 **for fire protection sprinkler contractor activity. The bond must be in the same amount as**

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 the surety bond required by ORS 701.085 for a specialty contractor performing a comparable
 2 volume of business. A surety bond issued under ORS 701.085 may be used to satisfy the
 3 bonding requirement of this subsection if the bond expressly applies for fire protection
 4 sprinkler contractor activity. The fire protection sprinkler contractor must provide proof
 5 satisfactory to the Department of Consumer and Business Services that the contractor is in
 6 compliance with this subsection.

7 (2) Have in effect public liability, personal injury and property damage insurance. The
 8 insurance must be in the same amount as the insurance policy required of a specialty con-
 9 tractor under ORS 701.105. An insurance policy issued under ORS 701.105 satisfies the in-
 10 surance requirements of this section if the policy expressly covers fire protection sprinkler
 11 contractor activity.

12 (3) Ensure that any fire protection sprinkler system layout work by or on behalf of the
 13 contractor is performed by a person who has adequate experience and training as prescribed
 14 by the department by rule.

15 **SECTION 4.** Section 3 of this 2005 Act does not apply to a fire protection sprinkler con-
 16 tractor if the contractor:

17 (1) Has acquired two or more years of fire protection sprinkler contracting experience
 18 on or before January 1, 2007; and

19 (2) Applies for a license under section 2 of this 2005 Act on or before January 1, 2008.

20 **SECTION 5.** The Department of Consumer and Business Services shall adopt rules to
 21 administer and enforce sections 2 to 7 of this 2005 Act. The rules shall include, but need not
 22 be limited to, provision for the following:

23 (1) Fees in amounts sufficient to cover the cost of administering and enforcing the fire
 24 protection sprinkler contractor program.

25 (2) Continuing education requirements for the renewal of a fire protection sprinkler
 26 contractor license.

27 (3) Experience and training requirements for persons performing fire protection sprinkler
 28 system layout work. In adopting the requirements, the department shall give consideration
 29 to any comparable standards adopted by nationally recognized sources for certification in
 30 engineering technology.

31 (4) Means of demonstrating qualification under section 4 this 2005 Act.

32 **SECTION 6.** The Department of Consumer and Business Services may suspend, revoke
 33 or refuse to renew the license of a fire protection sprinkler contractor for failure to comply
 34 with section 3 of this 2005 Act or department rules adopted under section 5 of this 2005 Act.

35 **SECTION 7.** Section 2 of this 2005 Act does not apply to:

36 (1) Employees of federal, state or local governments acting within the scope of their
 37 employment.

38 (2) A person registered as an engineer under ORS 672.090.

39 (3) A supplier of fire protection sprinkler system parts to a fire protection sprinkler
 40 contractor.

41 (4) An employee or subcontractor of a licensed fire protection sprinkler contractor.

42 (5) A person performing work on property owned or leased by the person.

43 **SECTION 8.** (1) The Department of Consumer and Business Services shall make fire
 44 protection sprinkler contractor licenses available for issuance no later than January 1, 2007.

45 (2) Sections 2 (1) and 3 of this 2005 Act become operative January 1, 2008.

1 **(3) The amendments to ORS 455.156 and 455.895 by sections 9 and 10 of this 2005 Act be-**
 2 **come operative January 1, 2008.**

3 **SECTION 9.** ORS 455.156 is amended to read:

4 455.156. (1) Notwithstanding any other provision of this chapter, ORS chapter 693 or ORS
 5 447.010 to 447.156, 447.992, 479.510 to 479.945, 479.990 or 479.995, the Department of Consumer and
 6 Business Services shall carry out the provisions of this section.

7 (2)(a) A municipality that establishes a building inspection program under ORS 455.148 or a
 8 plumbing inspection program under ORS 455.150 covering installations under the plumbing specialty
 9 code or Low-Rise Residential Dwelling Code may act on behalf of the State Plumbing Board to in-
 10 vestigate violations of and enforce ORS 447.030, 447.040, 693.030 and 693.040 and to issue notices
 11 of proposed assessment of civil penalties for those violations.

12 (b) A municipality that establishes a building inspection program under ORS 455.148 or an
 13 electrical inspection program under ORS 455.150 covering installations under the electrical specialty
 14 code or Low-Rise Residential Dwelling Code may act on behalf of the Electrical and Elevator Board
 15 to investigate violations of and enforce ORS 479.550 (1) and 479.620 and to issue notices of proposed
 16 assessment of civil penalties for those violations.

17 (c) A municipality that establishes a building inspection program under ORS 455.148 or 455.150
 18 may investigate violations and enforce any provisions of the program administered by the munici-
 19 pality.

20 **(d) A municipality that establishes a building inspection program under ORS 455.148 or**
 21 **455.150 may act on behalf of the department to investigate violations and enforce sections 2**
 22 **(1) and 3 of this 2005 Act.**

23 (3) The department shall establish:

24 (a) Procedures, forms and standards to carry out the provisions of this section, including but
 25 not limited to creating preprinted notices of proposed assessment of penalties that can be completed
 26 and served by municipal inspectors;

27 (b) A program to provide that all of the moneys recovered by the department, less collection
 28 expenses, be paid to the municipality that initiated the charges when a person charged with a vio-
 29 lation as provided in subsection (2) of this section, other than a violation of a licensing requirement,
 30 agrees to the entry of an assessment of civil penalty or does not request a hearing, and an order
 31 assessing a penalty is entered against the person;

32 (c) A uniform citation process to be used in all jurisdictions of the state for violation of a li-
 33 censing requirement. The process may include but need not be limited to all program areas admin-
 34 istered by a municipality under ORS 455.148 or 455.150 and may provide a uniform method for
 35 checking license status and issuing citations for violation of a licensing requirement, and a con-
 36 sistent basis for enforcement of licensing requirements and treatment of violations, including fine
 37 amounts;

38 (d) A program to provide a division of the moneys recovered by the department with the
 39 municipality that initiated the charges, when a person charged with a violation as provided in sub-
 40 section (2) of this section, other than a violation of a licensing requirement, requests a hearing and
 41 is assessed a penalty. One-half of the amounts recovered shall be paid to the municipality. The de-
 42 partment shall keep an amount equal to its costs of processing the proceeding and collection ex-
 43 penses out of the remaining one-half and remit the balance, if any, to the municipality; and

44 (e) A program to require municipalities to investigate violations of the department's permit re-
 45 quirements for plumbing installations and services under the plumbing specialty code and for

1 plumbing and electrical installations and services under the Low-Rise Residential Dwelling Code,
2 and to:

3 (A) Initiate notices of proposed assessment of civil penalties as agents of the boards designated
4 in subsection (2) of this section; and

5 (B) Pay the agents of the boards out of net civil penalty recoveries as if the recoveries were
6 under paragraphs (b) and (d) of this subsection.

7 (4) The assessment of a civil penalty under this section by a municipality is subject to the
8 amount limitations set forth in ORS 455.895.

9 (5)(a) It shall be a defense for any person charged with a penalty for violation of a building in-
10 spection program permit requirement covering plumbing installations under the plumbing specialty
11 code, electrical permit requirements under ORS 479.550 or plumbing or electrical requirements un-
12 der the Low-Rise Residential Dwelling Code that the person was previously penalized for the same
13 occurrence.

14 (b) A building inspection program permit requirement is a requirement contained in a specialty
15 code or municipal ordinance or rule requiring a permit before the particular installations covered
16 by the codes are commenced.

17 (c) A penalty for the same occurrence includes a combination of two or more of the following
18 that are based on the same plumbing or electrical installation:

19 (A)(i) An investigative or other fee added to an electrical permit fee when a permit was obtained
20 after the electrical installation was started;

21 (ii) A civil penalty pursuant to ORS 479.995 for violation of ORS 479.550 for failure to obtain
22 an electrical permit;

23 (iii) A civil penalty pursuant to ORS 455.895 for failure to obtain an electrical permit under the
24 Low-Rise Residential Dwelling Code; or

25 (iv) A municipal penalty, other than an investigative fee, for making an electrical installation
26 under the electrical specialty code or the Low-Rise Residential Dwelling Code without a permit; or

27 (B)(i) An investigative or other fee added to a plumbing permit fee when a permit was obtained
28 after the plumbing installation was started;

29 (ii) A civil penalty pursuant to ORS 447.992 for failure to obtain a plumbing permit as required
30 under the plumbing specialty code;

31 (iii) A civil penalty pursuant to ORS 455.895 for failure to obtain a plumbing permit under the
32 Low-Rise Residential Dwelling Code; or

33 (iv) A municipal penalty, other than an investigative fee, for making a plumbing installation
34 under the plumbing specialty code or the Low-Rise Residential Dwelling Code without a permit.

35 **SECTION 10.** ORS 455.895, as amended by section 76, chapter 655, Oregon Laws 2003, is
36 amended to read:

37 455.895. (1)(a) The State Plumbing Board may impose a civil penalty against a person as pro-
38 vided under ORS 447.992 and 693.992. Amounts recovered under this paragraph are subject to ORS
39 693.165.

40 (b) The Electrical and Elevator Board may impose a civil penalty against a person as provided
41 under ORS 479.995. Amounts recovered under this paragraph are subject to ORS 479.850.

42 (c) The Board of Boiler Rules may impose a civil penalty against a person as provided under
43 ORS 480.670. Amounts recovered under this paragraph shall be deposited to the General Fund.

44 (2) The Director of the Department of Consumer and Business Services, in consultation with the
45 appropriate board, if any, may impose a civil penalty against any person who violates any provision

1 of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, 446.566 to 446.646, 446.666 to
 2 446.746, 479.510 to 479.945, 479.950 and 480.510 to 480.670 **and sections 2 to 7 of this 2005 Act** and
 3 this chapter and ORS chapters 447, 460 and 693, or any rule adopted or order issued for the ad-
 4 ministration and enforcement of those provisions. Except as provided in subsections (3) and (8) of
 5 this section or ORS 446.995, a civil penalty imposed under this section must be in an amount de-
 6 termined by the appropriate board or the director of not more than \$5,000 for each offense or, in the
 7 case of a continuing offense, not more than \$1,000 for each day of the offense.

8 (3) Each violation of ORS 446.003 to 446.200 or 446.225 to 446.285, or any rule or order issued
 9 thereunder, constitutes a separate violation with respect to each manufactured structure or with
 10 respect to each failure or refusal to allow or perform an act required thereby, except that the
 11 maximum civil penalty may not exceed \$1 million for any related series of violations occurring
 12 within one year from the date of the first violation.

13 (4) The maximum penalty established by this section for a violation may be imposed only upon
 14 a finding that the person has engaged in a pattern of violations. The Department of Consumer and
 15 Business Services, by rule, shall define what constitutes a pattern of violations. Except as provided
 16 in subsections (1) and (9) of this section, moneys received from any civil penalty under this section
 17 are appropriated continuously for and shall be used by the director for enforcement and adminis-
 18 tration of provisions and rules described in subsection (2) of this section.

19 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

20 (6) A civil penalty imposed under this section may be remitted or reduced upon such terms and
 21 conditions as the director or the appropriate board considers proper and consistent with the public
 22 health and safety. In any judicial review of a civil penalty imposed under this section, the court may,
 23 in its discretion, reduce the penalty.

24 (7) Any officer, director, shareholder or agent of a corporation, or member or agent of a part-
 25 nership or association, who personally participates in or is an accessory to any violation by the
 26 partnership, association or corporation of a provision or rule described in subsection (2) of this
 27 section is subject to the penalties prescribed in this section.

28 (8) In addition to the civil penalty set forth in subsection (1) or (2) of this section, any person
 29 who violates a provision or rule described in subsection (2) of this section may be required by the
 30 director or the appropriate board to forfeit and pay to the General Fund of the State Treasury a
 31 civil penalty in an amount determined by the director or board that shall not exceed five times the
 32 amount by which such person profited in any transaction that violates a provision or rule described
 33 in subsection (2) of this section.

34 (9) If a civil penalty is imposed for a violation of a provision of ORS 446.566 to 446.646 and the
 35 violation relates to a filing or failure to file with a county assessor functioning as agent of the de-
 36 partment, the department, after deducting an amount equal to the department's procedural, col-
 37 lection and other related costs and expenses, shall forward one-half of the remaining civil penalty
 38 amount to the county in which the manufactured structure is located at the time of the violation.

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