

Senate Bill 1070

Sponsored by COMMITTEE ON RULES

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**.

Establishes Construction Contractor Risk Management Council. Requires council to ensure that public liability, personal injury and property damage coverage is available to construction contractors. Authorizes council to establish coverage programs to ensure availability of required amounts of coverage. Authorizes council to offer optional coverage to contractors and to create warranty coverage program for qualifying construction contractors.

Authorizes Construction Contractors Board to require that construction contractors obtain coverage through council.

Authorizes council establishment of education and training programs for construction contractors and employees. Authorizes assistance program for impaired or otherwise affected construction contractors.

Makes violation of council rule subject to civil penalty, not to exceed \$5,000.

Appropriates moneys from General Fund to council for 2005-2007 biennium.

A BILL FOR AN ACT

1
2 Relating to construction contractor liability; creating new provisions; amending ORS 701.105, 701.120
3 and 701.280; and appropriating money.

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

5 **SECTION 1. (1) The Construction Contractor Risk Management Council is established.**
6 **The council shall consist of seven members appointed by the Governor after consultation**
7 **with the Construction Contractors Board and the Department of Consumer and Business**
8 **Services.**

9 (2) The term of office for a council member is four years, but a member serves at the
10 pleasure of the Governor. Before the expiration of the term of a member, the Governor shall
11 appoint a successor whose term begins on January 1 next following. A member is eligible for
12 reappointment. If there is a vacancy for any cause, the Governor shall make an appointment
13 to become immediately effective for the unexpired term.

14 (3) In making appointments to the council, the Governor shall select persons having ex-
15 pertise relevant to the reduction of liability risks for construction contractors engaging in
16 construction activities. A member may not have any pecuniary interest, other than an inci-
17 dental interest that is disclosed and made a matter of public record at the time of appoint-
18 ment to the council, in any insurance provider or other business entity doing business in the
19 public liability, personal injury or property damage insurance industries.

20 **SECTION 2. (1) The Construction Contractor Risk Management Council may appoint an**
21 **administrator to aid the council in the performance of the duties, functions and powers of**
22 **the council.**

23 (2) The administrator shall hold office at the pleasure of the council.

24 (3) The administrator shall be paid a salary as provided by law or, if not so provided, as
25 prescribed by the council.

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 (4) Subject to any applicable provisions of ORS chapter 240, the administrator shall ap-
2 point all subordinate officers and employees of the council, prescribe their duties and fix
3 their compensation.

4 **SECTION 3.** In accordance with applicable provisions of ORS chapter 183, the Con-
5 struction Contractor Risk Management Council may adopt rules necessary for the adminis-
6 tration of sections 1 to 11 of this 2005 Act.

7 **SECTION 4.** The Construction Contractor Risk Management Council, the administrator
8 for the council and authorized representatives of the council may administer oaths, take
9 depositions and issue subpoenas to compel the attendance of witnesses and the production
10 of documents or other written information necessary to carry out sections 1 to 11 of this
11 2005 Act. If any person fails to comply with a subpoena issued under this section or refuses
12 to testify on matters on which the person lawfully may be interrogated, the council, admin-
13 istrator or authorized representative may follow the procedure set out in ORS 183.440 to
14 compel obedience.

15 **SECTION 5.** (1) To aid and advise the Construction Contractor Risk Management Council
16 in the performance of the functions of the council, in addition to the committees required
17 by sections 6 and 7 of this 2005 Act, the council may establish such advisory and technical
18 committees as the council considers necessary. These committees may be continuing or
19 temporary. The council shall determine the representation, membership, terms and organ-
20 ization of the committees and shall appoint their members. The administrator for the council
21 is an ex officio member of each state committee established under this section or section 6
22 or 7 of this 2005 Act.

23 (2) Members of a committee established under this section or section 6 or 7 of this 2005
24 Act are not entitled to compensation, but in the discretion of the administrator may be re-
25 imbursed from funds available to the council for actual and necessary travel and other ex-
26 penses incurred by them in the performance of their official duties in the manner and
27 amount provided in ORS 292.495.

28 **SECTION 6.** (1) The Construction Contractors Risk Management Council shall create a
29 state education and training committee for the purpose of implementing a program to pro-
30 vide contractors, and applicants for licensing as contractors, with information and advice
31 regarding best practices within the construction industry and with advice and training re-
32 garding construction contracting business management. The committee may provide recom-
33 mendations to the Construction Contractors Board, or to any agency issuing professional
34 licenses, registrations or certificates to employees of construction contractors, for the pro-
35 vision of professional education and training designed to increase or maintain professional
36 competency and reduce the number of claims filed against construction contractors.

37 (2) The state education and training committee may investigate complaints about the
38 performance or conduct of a construction contractor, or an employee of a construction
39 contractor, that may indicate a need for increased competency or ability to engage in con-
40 struction activities. The committee may recommend to the appropriate regulatory agency
41 that a person be required to successfully complete education or training as a condition of
42 obtaining or continuing to hold a valid license, registration or certificate. The council may
43 also create local education and training committees to investigate complaints received by the
44 state education and training committee and take actions necessary to improve performance
45 by construction contractors and their employees.

1 **SECTION 7.** (1) The Construction Contractor Risk Management Council shall create state
 2 and local construction contractor assistance committees to assist contractors suffering from
 3 impairments or other personal circumstances that may adversely affect their performance
 4 as construction contractors. The council may adopt guidelines for the provision of assistance
 5 to construction contractors by the construction contractor assistance committees.

6 (2) Any information provided to or obtained by a construction contractor assistance
 7 committee, or provided to or obtained by an agent of a construction contractor assistance
 8 committee, is:

9 (a) Confidential;

10 (b) Exempt from the provisions of ORS 192.410 to 192.505;

11 (c) Not discoverable or admissible in any civil proceeding without the written consent of
 12 the construction contractor to whom the information pertains; and

13 (d) Not discoverable or admissible in any disciplinary proceeding except to the extent
 14 provided by procedural rules of the Construction Contractors Board relating to the investi-
 15 gation of, and disciplinary proceedings concerning, the conduct of licensees and applicants
 16 for admission or reinstatement as a licensee under ORS chapter 701.

17 (3) The limitations placed on the disclosure and admissibility of information in this sec-
 18 tion do not apply to information relating to a construction contractor's noncooperation with
 19 a state or local construction contractor assistance committee or an agent of the committee
 20 or to information obtained by the council from any other source.

21 (4) All meetings of a construction contractor assistance committee are exempt from ORS
 22 192.610 to 192.690.

23 **SECTION 8.** (1) A person who in good faith makes a complaint or referral to the Con-
 24 struction Contractor Risk Management Council or an education and training committee as
 25 to the competence of a construction contractor or who provides information or testimony in
 26 connection with a construction contractor assistance committee is not subject to an action
 27 for any resulting civil damages.

28 (2) The council, education and training committees and construction contractor assist-
 29 ance committees are public bodies for purposes of ORS 30.260 to 30.300.

30 **SECTION 9.** (1) The Construction Contractor Risk Management Council shall ensure that
 31 public liability, personal injury and property damage coverage is available to construction
 32 contractors in the amounts required by ORS 701.105. To ensure coverage availability, the
 33 council may establish coverage programs that may include, but need not be limited to:

34 (a) A separate fund for the purpose of offering public liability, personal injury and prop-
 35 erty damage coverage in the amounts required by ORS 701.105 on an underwritten basis to
 36 construction contractors licensed under ORS chapter 701 that engage in construction activ-
 37 ities in this state.

38 (b) A construction contractor liability fund to pay the sums a contractor becomes legally
 39 obligated to pay as money damages because of a covered claim arising out of an act or
 40 omission related to construction activities. Payments from a liability fund described in this
 41 paragraph may be prorated or limited to provide coverage up to the amount of the insurance
 42 requirement applicable to the contractor under ORS 701.105. To administer a liability fund
 43 described in this paragraph, the council may:

44 (A) Assess all construction contractors licensed under ORS chapter 701 who are engaged
 45 in construction activities in this state for contributions to the liability fund;

1 (B) Establish definitions of coverage to be provided by the liability fund; and

2 (C) Retain or employ legal counsel to represent the liability fund and to defend and con-
3 trol the defense against any covered claim made against a construction contractor covered
4 by the liability fund.

5 (2) In addition to any fund or other coverage programs established by the council under
6 subsection (1) of this section, the council may establish a fund or other coverage program,
7 or may solicit group insurance coverage from a private insurance organization, for the pur-
8 pose of making optional public liability, personal injury and property damage coverage avail-
9 able on an underwritten basis in amounts beyond the minimum coverage amount required
10 by ORS 701.105.

11 (3) The council may establish a separate entity for the purpose of administering any fund
12 or other coverage program under this section. Any public liability, personal injury and
13 property damage coverage established by the council or by a separate entity created by the
14 council is exempt from the Insurance Code. The exemption from the Insurance Code does
15 not apply to group or other insurance coverage supplied to the council or to a separate entity
16 by a licensed insurance provider.

17 (4) Records of a claim against a fund established under this section are exempt from
18 disclosure under ORS 192.410 to 192.505.

19 (5) The council or an entity established by the council may contract with a private in-
20 surance provider licensed in this state for the provision of clerical, support and sales services
21 to administer a coverage program established under this section. All contracts entered into
22 under this subsection must include a provision requiring the council to regularly review re-
23 cords and allowing the council to negotiate changes to the contracted services and proce-
24 dures provided for the purpose of ensuring that the contract results in adequate protection
25 of the public welfare. The council shall review the performance of an insurance provider
26 under a contract described in this subsection not less often than quarterly and shall inves-
27 tigate any complaints received by the council regarding the services or procedures con-
28 tracted for by the council.

29 (6) If the council establishes a coverage program under this section to make coverage
30 available in the amounts required by ORS 701.105, the council shall make the coverage
31 available at the same cost for each person within the classes of licensees for which ORS
32 701.105 establishes the same minimum coverage requirement.

33 **SECTION 10.** The Construction Contractor Risk Management Council may, in addition
34 to any other coverage program established by the council, establish a fund for paying claims
35 of property owners for work covered by a warranty made by a construction contractor par-
36 ticipating in the fund. The council may establish minimum qualifications for participation in
37 a warranty payment fund, including, but not limited to, requiring participating contractors
38 to abide by standards of practice and conduct established by the council. Contractor partic-
39 ipation in a warranty payment fund shall be by mutual consent of the council and the par-
40 ticipating contractor. A warranty payment fund established by the council under this section
41 is not subject to the Insurance Code. Records of a claim against the fund are exempt from
42 disclosure under ORS 192.410 to 192.505.

43 **SECTION 11.** The Construction Contractor Risk Management Council may assess a civil
44 penalty, not to exceed \$5,000, for each violation of a rule adopted by the council under section
45 3 of this 2005 Act. Civil penalties under this section shall be imposed in the manner provided

1 in ORS 183.745.

2 **SECTION 12.** Notwithstanding the term of office specified by section 1 of this 2005 Act,
3 of the members first appointed to the Construction Contractor Risk Management Council:

4 (1) One shall serve for a term ending January 1, 2007.

5 (2) Two shall serve for terms ending on January 1, 2008.

6 (3) Two shall serve for terms ending on January 1, 2009.

7 (4) Two shall serve for terms ending on January 1, 2010.

8 **SECTION 13.** There is appropriated to the Construction Contractor Risk Management
9 Council, for the biennium beginning July 1, 2005, out of the General Fund, the amount of
10 \$ _____ for the purpose of carrying out sections 1 to 11 of this 2005 Act.

11 **SECTION 14.** Section 15 of this 2005 Act is added to and made a part of ORS chapter 701.

12 **SECTION 15.** If the Construction Contractors Board determines that public liability,
13 personal injury and property damage coverage is adequately available to construction con-
14 tractors through a fund or other coverage program established by the Construction Con-
15 tractor Risk Management Council, the board shall adopt rules to require that a licensed
16 construction contractor performing construction activities in this state comply with ORS
17 701.105 by purchasing coverage made available by the council. The rule may not require a
18 residential-only contractor who provides a board-approved alternative form of security under
19 ORS 701.105 to obtain coverage made available by the council. The board shall make the rules
20 applicable to a contractor only upon the expiration of the policy period for any public liabil-
21 ity, personal injury or property damage insurance the contractor has in effect on the date
22 the board rules become effective. The rule may not prohibit a construction contractor from
23 obtaining coverage beyond the minimum amount required by ORS 701.105 through sources
24 other than the council.

25 **SECTION 16.** Section 15 of this 2005 Act is amended to read:

26 **Sec. 15.** If the Construction Contractors Board determines that public liability, personal injury
27 and property damage coverage is adequately available to construction contractors through a fund
28 or other coverage program established by the Construction Contractor Risk Management Council,
29 the board shall adopt rules to require that a licensed construction contractor performing con-
30 struction activities in this state comply with ORS 701.105 by purchasing coverage made available
31 by the council. [*The rule may not require a residential-only contractor who provides a board-approved*
32 *alternative form of security under ORS 701.105 to obtain coverage made available by the council.*] The
33 board shall make the rules applicable to a contractor only upon the expiration of the policy period
34 for any public liability, personal injury or property damage insurance the contractor has in effect
35 on the date the board rules become effective. The rule may not prohibit a construction contractor
36 from obtaining coverage beyond the minimum amount required by ORS 701.105 through sources
37 other than the council.

38 **SECTION 17.** It is the intent of sections 9, 10 and 15 of this 2005 Act that any coverage
39 program established by the Construction Contractor Risk Management Council under section
40 9 or 10 of this 2005 Act displace competition with a regulatory program in the public liability,
41 personal injury and property damage insurance industry to a limited degree. The regulatory
42 program is intended to grant immunity from federal and state antitrust laws to any entity
43 formed by or contracting with the Construction Contractor Risk Management Council for the
44 purpose of providing public liability, personal injury and property damage coverage to con-
45 struction contractors licensed and conducting construction activities within this state. The

1 **activities of any person that comply with sections 9, 10 and 15 of this 2005 Act may not be**
 2 **considered in restraint of trade, a conspiracy or combination or any other unlawful activity**
 3 **in violation of any provision of ORS 646.705 to 646.826 or federal antitrust laws.**

4 **SECTION 18.** ORS 701.105 is amended to read:

5 701.105. (1) Except as provided in [subsection (2) of] this section, a contractor who possesses a
 6 license as required under this chapter shall have in effect public liability, personal injury and
 7 property damage insurance covering the work of the contractor that is subject to this chapter, for
 8 an amount not less than:

- 9 (a) \$500,000 for a general contractor or licensed developer.
- 10 (b) \$300,000 for a residential-only specialty contractor.
- 11 (c) \$500,000 for all other specialty contractors.
- 12 (d) \$100,000 for a limited contractor.
- 13 (e) \$300,000 for an inspector.

14 (2) The Construction Contractors Board by rule, in consultation with the Department of Con-
 15 sumer and Business Services, may allow a general or specialty contractor that is a residential-only
 16 contractor to provide an alternative form of security approved by the board instead of procuring a
 17 public liability, personal injury and property damage insurance policy. The board may approve an
 18 alternative form of security if the board determines that the alternative form of security provides
 19 protection to the public equivalent to the protection provided by an insurance policy in the amounts
 20 otherwise applicable to the residential-only contractor under subsection (1) of this section. A
 21 board-approved alternative form of security may consist of a combination of financial resources.

22 (3) A residential-only contractor who provides a board-approved alternative form of security
 23 under subsection (2) of this section is considered for purposes of this chapter to have obtained in-
 24 surance described in subsection (1) of this section. This subsection does not subject to regulation
 25 as an insurer a person who issues all or part of an alternative form of security, unless the alterna-
 26 tive form of security otherwise qualifies as an insurance product.

27 **(4) The board, by rule, may recognize an amount of public liability, personal injury or**
 28 **property damage coverage in any form purchased through the Construction Contractor Risk**
 29 **Management Council as equivalent for purposes of subsection (1) of this section to a like**
 30 **amount of insurance.**

31 [(4)] (5) The contractor shall provide satisfactory evidence to the board at the time of licensure
 32 and renewal that the insurance policy, **insurance equivalent** or board-approved alternative form
 33 of security required by this section has been procured and is in effect.

34 **SECTION 19.** ORS 701.105, as amended by section 2, chapter 766, Oregon Laws 2003, is
 35 amended to read:

36 701.105. (1) A contractor who possesses a license as required under this chapter shall have in
 37 effect public liability, personal injury and property damage insurance covering the work of the
 38 contractor that is subject to this chapter, for an amount not less than:

- 39 (a) \$500,000 for a general contractor or licensed developer.
- 40 (b) \$300,000 for a residential-only specialty contractor.
- 41 (c) \$500,000 for all other specialty contractors.
- 42 (d) \$100,000 for a limited contractor.
- 43 (e) \$300,000 for an inspector.

44 **(2) The Construction Contractors Board, by rule, may recognize an amount of public li-**
 45 **ability, personal injury or property damage coverage in any form purchased through the**

1 **Construction Contractor Risk Management Council as equivalent for purposes of subsection**
 2 **(1) of this section to a like amount of insurance.**

3 [(2)] (3) The contractor shall provide satisfactory evidence to the [*Construction Contractors*]
 4 board at the time of licensure and renewal that the insurance required by subsection (1) of this
 5 section, **or an equivalent described under subsection (2) of this section**, has been procured and
 6 is in effect.

7 **SECTION 20.** ORS 701.120 is amended to read:

8 701.120. (1) As used in this section, a “specialized education program” means one or more of the
 9 following:

10 (a) A structured program that is approved or certified by an appropriate state or federal agency,
 11 or by an organization recognized by the Construction Contractors Board as representing con-
 12 struction contractors, and is designed to educate contractors to deal with one or more specific
 13 consumer health or safety issues.

14 (b) A board-approved program from an accredited college or university that grants a two-year
 15 or four-year degree upon successful completion of the program.

16 (c) An apprenticeship program that is approved by the board.

17 **(d) An education or training program developed by a Construction Contractor Risk**
 18 **Management Council education and training committee.**

19 (2) The board may identify general contractor and specialty contractor activities that require
 20 or substantially benefit from specialized education and establish standards for programs providing
 21 specialized education in those activities. The board may recognize and adopt the program standards
 22 established by another state agency regulating the same or related activities.

23 (3) Upon receipt of a request from a contractor who has successfully completed a specialized
 24 education program meeting board standards, the board shall note the specialized education on the
 25 contractor’s licensing record as part of the contractor’s professional credentials. The board may
 26 remove a professional credential from the contractor’s licensing record if the contractor fails to
 27 complete continuing education or other requirements imposed by the entity issuing the credential
 28 for maintaining competency in the activity, if the requirements were clearly stated in writing and
 29 provided to the contractor by the entity.

30 (4) The board shall include professional credentials described in this section in releases of con-
 31 tractor licensing information by the board. The board shall adopt rules to permit the inclusion of
 32 professional credentials described in this section in advertising or other information holding forth
 33 to the public the qualifications of a contractor.

34 **SECTION 21.** ORS 701.280 is amended to read:

35 701.280. (1) The Construction Contractors Board shall require by rule that applicants for
 36 licensure under this chapter provide evidence of completion of up to 16 hours of education **regard-**
 37 **ing best practices within the construction industry or** in subjects relating to business practices
 38 and laws that affect contractors.

39 (2) In adopting rules pursuant to this section, the Construction Contractors Board shall take
 40 into consideration the availability of training programs in areas of the state and shall encourage
 41 training providers to use the most up-to-date technology. **The board shall cooperate with any ed-**
 42 **ucation and training committee established by the Construction Contractor Risk Manage-**
 43 **ment Council in developing and conducting programs to provide contractors with information**
 44 **and advice regarding best practices within the construction industry and advice and training**
 45 **regarding construction contracting business management.** The board [*shall*] may not prohibit

1 private organizations from providing the training services required under this section, provided the
2 training meets any educational standards established by the board. The board periodically shall
3 review the qualifications of private training organizations and instructors to determine compliance
4 with the educational standards. The board shall develop and make available to the public a list of
5 public and private training providers that the board deems qualified to provide the training required
6 under this section.

7 (3) As a requirement for renewing a license, the Construction Contractors Board shall require
8 by rule that contractors who have been licensed with the board for fewer than two years provide
9 evidence of completion of up to 16 hours of education **regarding best practices within the con-**
10 **struction industry or** in subjects relating to business practices and laws that affect contractors.

11 (4) In addition to the requirements of subsection (1) of this section, the Construction Contractors
12 Board shall require competency testing substantially similar to nationally recognized certification
13 programs for any person applying for certification as a home inspector under ORS 701.350. The
14 board shall also adopt continuing education requirements for individuals certified as home inspec-
15 tors.

16 (5) A person who has complied with the licensing requirements of ORS 446.395 is exempt from
17 requirements specified pursuant to subsections (1) and (3) of this section.

18 (6) If a contractor suspended for violation of ORS 701.135 (1)(h) has not completed the educa-
19 tional requirements of this section, the suspended licensee must complete those requirements before
20 being reinstated.

21 **SECTION 22. The amendments to section 15 of this 2005 Act by section 16 of this 2005**
22 **Act become operative January 2, 2008.**

23
