

Enrolled
Senate Bill 866

Sponsored by Senator ANDERSON, Representatives GOMBERG, SMITH DB, SMITH G; Representatives BOSHART DAVIS, CATE, HAYDEN, LEIF, LEVY, MOORE-GREEN, OWENS, RESCHKE, WALLAN, WEBER, WITT, WRIGHT

CHAPTER

AN ACT

Relating to building code enforcement; creating new provisions; and amending ORS 455.148, 455.150, 455.715, 455.732 and 455.740.

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

SECTION 1. Sections 2 to 5 of this 2021 Act are added to and made a part of ORS 455.100 to 455.450.

SECTION 2. (1) As used in sections 2 to 5 of this 2021 Act:

(a) "Building official" has the meaning given that term in ORS 455.715.

(b) "Contract building official" means an owner, manager or employee of a person that the Director of the Department of Consumer and Business Services has licensed to perform specialty code inspections and plan reviews under ORS 455.457 and that engages in the business of providing the services described in ORS 455.148 (3) and 455.150 (3) to one or more municipalities to which the director has delegated a building inspection program.

(c) "Discretionary decision" means:

(A) Waiving a plan review, an inspection or a provision of the state building code; or

(B) Allowing an alternative material, design or method of construction.

(d) "Qualified employee" means an individual that a municipality employs and has designated to ratify or disapprove a contract building official's discretionary decisions and who:

(A) Before exercising oversight over a contract building official, completed, with any applicable certification or other evidence of completion, basic training that the director determines is necessary; and

(B) Within 180 days after a municipality's designation of the individual as a qualified employee, completed, with any applicable certification or other evidence of completion, any advanced training that the director determines is necessary.

(2)(a) Notwithstanding ORS 455.148 (3) and 455.150 (3), a city that procured services from a contract building official on or after January 1, 2018, and before the effective date of this 2021 Act may continue to procure or may again procure services from a contract building official on and after the effective date of this 2021 Act only if the city complies with the provisions of sections 2 to 5 of this 2021 Act. A city that did not procure services from a contract building official before January 1, 2018, may not procure services from a contract building official unless:

(A) The city procures services from a contract building official for a period of not more than 180 days while recruiting for an individual to employ as a building official; or

(B) The city receives approval from the director to procure services from a contract building official for not more than 180 additional days after the period described in subparagraph (A) of this paragraph upon a showing that the city's recruitment to employ a building official remains active after the period described in subparagraph (A) of this paragraph.

(b) A county may procure services from a contract building official after the effective date of this 2021 Act only if the county complies with the provisions of sections 2 to 5 of this 2021 Act and only if the county's procurement occurs for the periods and under the circumstances described for cities in paragraph (a)(A) and (B) of this subsection.

(3)(a) A contract building official shall notify a qualified employee in writing of each of the contract building official's discretionary decisions. The contract building official shall notify a permit applicant of each discretionary decision that relates to the permit application. The notice must list and describe available opportunities for a hearing and appeal of the decision.

(b) A qualified employee must review and ratify or disapprove a contract building official's discretionary decision within 30 days after receiving notice of the decision.

(4)(a) Except as otherwise provided in paragraph (b) of this subsection, a municipality that procures services from a contract building official must establish a local board to which a permit applicant may appeal a contract building official's discretionary decisions.

(b)(A) A city need not establish a local board if the county within which the city is located, or an adjacent county, has a local board that hears, in accordance with this section, all appeals of the discretionary decisions of the city's contract building official. A county need not establish a local board if an adjacent county has a local board that hears, in accordance with this section, all appeals of the discretionary decisions of the county's contract building official or the discretionary decisions of all contract building officials for cities located within the county.

(B) A city may enter into an agreement with the county within which the city is located, or an adjacent county, to hear appeals in accordance with this section. A county may enter into an agreement with an adjacent county to hear appeals in accordance with this section.

(c) A local board that a city establishes under paragraph (a) of this subsection must include as a member the building official of the county within which the city is located or the building official of an adjacent county. A local board that a county establishes under paragraph (a) of this subsection must include as a member a building official from an adjacent county.

(d) A local board described in paragraph (a) of this subsection may not include as a member any contract building official or an owner, manager, director, officer or employee of a person, other than an employee of the municipality, that performs building inspections. An individual who engages in the business of building design or construction may be a member of the local board, but may not hear an appeal of a contract building official's discretionary decision concerning a project that involves a business, or a competitor of a business, that:

(A) The individual owns or manages or for which the individual provides services as an employee, agent or contractor; or

(B) A family member or a member of the individual's household owns or manages or for which the family member or member of the household provides services as an employee, agent or contractor.

(5)(a) The appeal rights to which a permit applicant is entitled before a local board described in subsection (4) of this section must be in addition to and not in lieu of any other rights of appeal the permit applicant may have. A municipality shall require a permit applicant to submit any appeal within 30 days after receiving a notice concerning the permit application under subsection (3) of this section and the local board must review and issue a determination of the appeal within 30 days after receiving notice of the appeal.

(b) In an appeal under subsection (4) of this section, a permit applicant must establish by a preponderance of the evidence that overturning the discretionary decision of the contract building official will not create a dangerous or unsafe condition or decrease the minimum fire and life safety standards set forth in the relevant code.

(6)(a) A city that procures services from a contract building official shall have an independent auditor examine the finances of the city's building inspection program at least once every two years. The city may have the audit performed in conjunction with an audit under ORS 297.425. A county that procures services from a contract building official shall have an audit performed that covers the period of time during which the contract building official performed services for the county.

(b) At a minimum, an audit under this subsection must examine all collections and usage of permit fees and all expenditures of moneys that have occurred from the proceeds of the fees since the last audit or since a municipality began procuring services from the contract building official, whichever period is shorter, and must verify that the municipality dedicates all fees the municipality collects for plan review, permit issuance or administering and enforcing specialty codes only to the purposes specified in ORS 455.210 and 479.845.

(c) A municipality shall make the results of each audit available to the public by easily accessible electronic means, including by posting the results on the municipality's website.

(7) A city that procured services from a contract building official within the period described in subsection (2) of this section may at any time choose to procure services from a different contract building official, may employ a building official or, in cooperation with another municipality, may appoint a building official employed by the other municipality to administer a building inspection program for both the city and the other municipality.

(8)(a) If the director has reason to believe that a violation of this section has occurred, the director may:

(A) Examine a municipality's building code inspection, administration and enforcement activities and the activities of the contract building official from which the municipality procured services;

(B) Perform an investigation and take sworn testimony; and

(C) Issue subpoenas, subject to the authorization of the Attorney General, to persons or for records for the purpose of obtaining testimony, documents and information about a municipality's official actions or omissions and the actions or omissions of a contract building official, including information that is subject to public inspection under ORS 192.311 to 192.478.

(b) Before taking an action under paragraph (a) of this subsection, the director shall notify the municipality and the contract building official that are the subjects of the director's intended action. In the notice, the director shall set forth the reasons the director believes a violation has occurred and cite any applicable statutes or rules. The director may immediately take an action described in paragraph (a) of this subsection if the director does not receive a satisfactory response within 30 days after the date of the director's notice.

(9)(a) If the director finds that a violation of this section has occurred, the director may issue and serve a written order upon a municipality, or upon a contract building official from which the municipality procured services, that specifies corrective action. The order must state the facts and identify applicable law that forms the basis for the director's finding that a violation has occurred and must give the municipality or the contract building official reasonable time, which may not be less than 10 business days, within which to perform the director's specified corrective action.

(b) In addition to the corrective action described in paragraph (a) of this subsection, the director may require the municipality to:

(A) Increase the frequency of the audit required under subsection (6) of this section to once per year.

(B) Submit a written plan that describes how the municipality will achieve compliance with this section. If the director accepts the plan, the director shall incorporate the provisions of the plan into an order that is binding upon the municipality.

(C) State and document the actions that the municipality has undertaken independently to correct the violation.

(c) If the director finds that a pattern of violations of this section has occurred:

(A) The municipality that is the subject of the director's finding may not procure services from a contract building official and shall, within 180 days after the date of the director's finding:

(i) Employ a building official;

(ii) Appoint a building official in cooperation with another municipality and agree with the other municipality that the building official shall perform services for both municipalities; or

(iii) Abandon the municipality's building inspection program in accordance with ORS 455.148 and 455.150; and

(B) The director may suspend, revoke, deny or refuse to renew the certification of the contract building official that is the subject of the director's finding. An action of the director under this subparagraph does not affect a municipality's ability to procure services from a different contract building official with a valid certification.

(d) In any proceeding under paragraph (c)(B) of this subsection, the municipality that appoints or employs the contract building official may appear as a party in interest, either for or against the director's proposed action.

SECTION 3. (1) A municipality may enact or adopt an ordinance or resolution or take another legislative action to ratify the discretionary decisions that a contract building official made before the effective date of this 2021 Act.

(2) If a municipality ratifies a discretionary decision that a contract building official made on behalf of the city as part of the administration and enforcement of a building inspection program before the effective date of this 2021 Act, the contract building official's discretionary decision is lawful to the same extent that the discretionary decision would be lawful if the municipality had made the discretionary decision.

(3) A permit or certificate of occupancy that a municipality ratifies under this section is presumed valid.

SECTION 4. (1) A building official, a contract building official, an inspector, a plan reviewer or another person that provides building inspection services under contract with a municipality is a public official for the purposes of ORS chapter 244.

(2) In addition to and not in lieu of the authority of the Oregon Government Ethics Commission, the Director of the Department of Consumer and Business Services has the authority to suspend, revoke, deny, condition or refuse to renew a license, certification or registration of a building official, contract building official, inspector, plan reviewer or other person that provides building inspection services under contract with a municipality if the director determines that the building official, contract building official, inspector, plan reviewer or other person or an owner, director, officer, manager, member or majority shareholder of the building official, contract building official, inspector, plan reviewer or other person has violated ORS 244.025, 244.040, 244.047, 244.175, 244.177 and 244.179 or has engaged in an actual conflict of interest as defined in ORS 244.020.

(3) A determination of the director under subsection (2) of this section does not bind the Oregon Government Ethics Commission.

SECTION 5. (1) A city that intends to continue to procure services from a contract building official shall, on or after the effective date of this 2021 Act:

(a) Comply with section 2 of this 2021 Act; and

(b) Submit an updated operating plan to the Director of the Department of Consumer and Business Services that outlines the city's plan for compliance with section 2 of this 2021 Act.

(2) A city that does not comply with section 2 of this 2021 Act or does not submit an updated operating plan as provided in subsection (1)(b) of this section may not procure services from a contract building official unless the city's procurement occurs for the periods and under the circumstances described in section 2 (2)(a)(A) and (B) of this 2021 Act.

SECTION 6. Section 7 of this 2021 Act is added to and made a part of ORS chapter 12.

SECTION 7. An action to challenge the validity of a building permit that a contract building official, as defined in section 2 of this 2021 Act, issued before the effective date of this 2021 Act on the basis that the contract building official lacked the authority to issue the building permit or to make a discretionary decision, as defined in section 2 of this 2021 Act, must be commenced on or before December 31, 2024.

SECTION 8. ORS 455.148 is amended to read:

455.148. (1)(a) A municipality that assumes the administration and enforcement of a building inspection program shall administer and enforce the program for all of the following:

(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of this subsection.

(B) Manufactured dwelling installation requirements under ORS 446.155, 446.185 (1) and 446.230.

(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446.

(D) Park and camp programs regulated under ORS 455.680.

(E) Tourist facilities regulated under ORS 446.310 to 446.350.

(F) Manufactured dwelling alterations regulated under ORS 446.155.

(G) Accessory buildings or structures under ORS 446.253.

(H) Boilers and pressure vessels described in rules adopted under ORS 480.525 (5).

(b) A building inspection program of a municipality may not include:

(A) Boiler and pressure vessel programs under ORS 480.510 to 480.670 except those described in rules adopted under ORS 480.525 (5);

(B) Elevator programs under ORS 460.005 to 460.175;

(C) Amusement ride regulation under ORS 460.310 to 460.370;

(D) Prefabricated structure regulation under ORS chapter 455;

(E) Manufacture of manufactured dwelling programs under ORS 446.155 to 446.285, including the administration and enforcement of federal manufactured dwelling construction and safety standards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety Standards Act of 1974;

(F) Licensing and certification, or the adoption of statewide codes and standards, under ORS chapter 446, 447, 455, 479 or 693; or

(G) Review of plans and specifications as provided in ORS 455.685.

(2) A municipality that administers a building inspection program as allowed under this section shall do so for periods of four years. The Department of Consumer and Business Services shall adopt rules to adjust time periods for administration of a building inspection program to allow for variations in the needs of the department and participants.

[3] (3)(a) [When] **If** a municipality administers a building inspection program, the governing body of the municipality shall, unless other means are already provided, appoint **or employ** a person to **serve as a building official, who will** administer and enforce the building inspection program[, *who shall be known as the building official*]. **Under the circumstances described in section 2 (2) of this 2021 Act, a municipality may for the same purpose enter into a contract with a contract building official, as defined in section 2 of this 2021 Act.** A building official **or contract building official** shall, in the municipality [*for which*] **that** appointed **or employed the building official or that contracted with the contract building official**, attend to all aspects of code enforcement, including the issuance of all building permits. Two or more municipalities may combine in the appointment of a single building official **or in a contract for a single contract building official** for the purpose of administering a building inspection program within [*their communities*] **each municipality.**

(b) A contract between a municipality and a contract building official is subject to applicable provisions of ORS chapters 279A, 279B and 279C.

(4)(a) By January 1 of the year preceding the expiration of the four-year period described in subsection (2) of this section, the governing body of the municipality shall notify the Director of the Department of Consumer and Business Services and, if the municipality is not a county, notify the county whether the municipality will continue to administer and enforce the building inspection program after expiration of the four-year period.

(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the director and the municipality and, if the municipality is not a county, the county may by agreement extend that date to no later than March 1.

(5) If a city does not notify the director, or notifies the director that *[it]* **the city** will not administer the building inspection program, the county or counties *[in]* **within** which the city is located shall administer and enforce the county program within the city in the same manner as the program is administered and enforced outside the city, except as provided by subsection (6) of this section.

(6) If a county does not notify the director, or notifies the director that *[it]* **the county** will not administer and enforce a building inspection program, the director shall contract with a municipality or other person or use such state employees or state agencies as are necessary to administer and enforce a building inspection program, and permit or other fees arising *[therefrom shall]* **from the building inspection program must** be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account responsible for paying the expenses *[thereof]* **of the department related to administering and enforcing the building inspection program.** A state employee may not be displaced as a result of using contract personnel.

(7) The governing body of a municipality may commence responsibility for the administration and enforcement of a building inspection program beginning July 1 of any year by notifying the director no later than January 1 of the same year and obtaining the director's approval of an assumption plan as described in subsection (11)(c) of this section.

(8) The department shall adopt rules to require the governing body of each municipality assuming or continuing a building inspection program under this section to submit a written plan with the notice required under subsection (4) or (7) of this section. If the department is the governing body, the department shall have a plan on file. The plan must specify how cooperation with the State Fire Marshal or a designee of the State Fire Marshal will be achieved and how a uniform fire code will be considered in the review process of the design and construction phases of buildings or structures.

(9) A municipality that administers and enforces a building inspection program pursuant to this section shall recognize and accept the performances of state building code activities by businesses and persons authorized under ORS 455.457 to perform the activities as if the activities were performed by the municipality. A municipality is not required to accept an inspection, a plan or a plan review that does not meet the requirements of the state building code.

(10) The department or a municipality that accepts an inspection or plan review as required by this section by a person licensed under ORS 455.457 has no responsibility or liability for the activities of the licensee.

(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate building inspection programs that municipalities assume on or after January 1, 2002. Regulation under this subsection *[shall]* **must** include but not be limited to:

(a) Creating building inspection program application and amendment requirements and procedures;

(b) Granting or denying applications for building inspection program authority and amendments;

(c) Requiring a municipality assuming a building inspection program to submit with the notice given under subsection (7) of this section an assumption plan that includes, at a minimum:

(A) A description of the intended availability of program services, including proposed service agreements for carrying out the program during at least the first two years;

(B) Demonstration of the ability and intent to provide building inspection program services for at least two years;

(C) An estimate of proposed permit revenue and program operating expenses;

(D) Proposed staffing levels; and

(E) Proposed service levels;

(d) Reviewing procedures and program operations of municipalities;

(e) Creating standards for efficient, effective, timely and acceptable building inspection programs;

(f) Creating standards for justifying increases in building inspection program fees adopted by a municipality;

(g) Creating standards for determining whether a county or department building inspection program is economically impaired [*in its ability*] **because of the county's or the department's inability** to reasonably continue providing the program throughout a county, if another municipality is allowed to provide a building inspection program within the same county; and

(h) Enforcing the requirements of this section.

(12) The department may assume administration and enforcement of a building inspection program:

(a) During the pendency of activities under ORS 455.770;

(b) If a municipality abandons or is no longer able to administer the building inspection program; [*and*] **or**

(c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

(13) If the department assumes the administration and enforcement of a building inspection program under this section, in addition to any other power granted to the director, the director may:

(a) Enter into agreements with local governments under ORS 455.185 regarding the administration and enforcement of the assumed building inspection program;

(b) Take action as described in ORS 455.192 to ensure that sufficient staff and other resources are available for the administration and enforcement of the assumed building inspection program; [*and*]

(c) Charge fees described in ORS 455.195 for department services provided in administering and enforcing the assumed building inspection program[.]; **and**

(d) Ratify or disapprove the discretionary decisions of a contract building official, as both terms are defined in section 2 of this 2021 Act, to the extent that a municipality could ratify or disapprove the discretionary decisions of the municipality's contract building official.

(14) A municipality that abandons or otherwise ceases to administer and enforce a building inspection program that the municipality assumed under this section may not resume the administration or enforcement of the program for at least two years. The municipality may resume the administration and enforcement of the abandoned program only on July 1 of an odd-numbered year. Prior to resuming the administration and enforcement of the program, the municipality must follow the notification procedure set forth in subsection (7) of this section.

SECTION 9. ORS 455.150 is amended to read:

455.150. (1) Except as provided in subsection (15) of this section, a municipality that assumes the administration and enforcement of a building inspection program prior to January 1, 2002, may administer and enforce all or part of a building inspection program. A building inspection program:

(a) Is a program that includes the following:

(A) The state building code, as defined in ORS 455.010, except as set forth in paragraph (b) of this subsection.

(B) Manufactured dwelling installation requirements under ORS 446.155, 446.185 (1) and 446.230.

(C) Manufactured dwelling parks and mobile home parks under ORS chapter 446.

(D) Park and camp programs regulated under ORS 455.680.

(E) Tourist facilities regulated under ORS 446.310 to 446.350.

(F) Manufactured dwelling alterations regulated under ORS 446.155.

- (G) Accessory buildings or structures under ORS 446.253.
- (H) Boilers and pressure vessels described in rules adopted under ORS 480.525 (5).
- (b) Is not a program that includes:
 - (A) Boiler and pressure vessel programs under ORS 480.510 to 480.670 except those described in rules adopted under ORS 480.525 (5);
 - (B) Elevator programs under ORS 460.005 to 460.175;
 - (C) Amusement ride regulation under ORS 460.310 to 460.370;
 - (D) Prefabricated structure regulation under ORS chapter 455;
 - (E) Manufacture of manufactured dwelling programs under ORS 446.155 to 446.285, including the administration and enforcement of federal manufactured dwelling construction and safety standards adopted under ORS 446.155 or the National Manufactured Housing Construction and Safety Standards Act of 1974;
 - (F) Licensing and certification, or the adoption of statewide codes and standards, under ORS chapter 446, 447, 455, 479 or 693; and
 - (G) Review of plans and specifications as provided in ORS 455.685.

(2) A municipality that administers a building inspection program as allowed under this section shall do so for periods of four years. The Department of Consumer and Business Services shall adopt rules to adjust time periods for administration of a building inspection program to allow for variations in the needs of the department and participants.

[3] **(3)(a)** *[When]* **If** a municipality administers a building inspection program, the governing body of the municipality shall, unless other means are already provided, appoint **or employ** a person to **serve as a building official, who will** administer and enforce **all or parts of** the building inspection program *[or parts thereof, who shall be known as the building official]*. **Under the circumstances described in section 2 (2) of this 2021 Act, a municipality may for the same purpose enter into a contract with a contract building official, as defined in section 2 of this 2021 Act.** A building official **or contract building official** shall, in the municipality *[for which]* **that** appointed **or employed the building official or contracted with the contract building official**, attend to all aspects of code enforcement, including the issuance of all building permits. Two or more municipalities may combine in the appointment of a single building official **or in a contract with a single contract building official** for the purpose of administering a building inspection program within *[their communities]* **each municipality.**

(b) A contract between a municipality and a contract building official is subject to applicable provisions of ORS chapters 279A, 279B and 279C.

(4)(a) By January 1 of the year preceding the expiration of the four-year period described in subsection (2) of this section, the governing body of the municipality shall notify the Director of the Department of Consumer and Business Services and, if not a county, notify the county whether the municipality will continue to administer **all or part of** the building inspection program¹, *or parts thereof,* after *[expiration of]* the four-year period **expires**. If parts of a building inspection program are to be administered and enforced by a municipality, the parts shall correspond to a classification designated by the director as reasonable divisions of work.

(b) Notwithstanding the January 1 date set forth in paragraph (a) of this subsection, the director and the municipality and, if the municipality is not a county, the county may by agreement extend that date to no later than March 1.

(5) If a city does not notify the director, or notifies the director that *[it]* **the city** will not administer **all or parts of** certain specialty codes *[or parts thereof]* under the building inspection program, the county or counties *[in]* **within** which the city is located shall administer and enforce those codes or parts *[thereof]* **of the codes** within the city in the same manner as *[it administers and enforces them]* **the county or counties administer and enforce the codes or parts of the codes** outside the city, except as provided by subsection (6) of this section.

(6) If a county does not notify the director, or notifies the director that *[it]* **the county** will not administer and enforce **all or parts of** certain specialty codes *[or parts thereof]* under the building inspection program, the director shall contract with a municipality or other person or use such state

employees or state agencies as are necessary to administer and enforce those codes or parts [thereof] **of the codes**, and permit or other fees arising [therefrom shall] **from the administration and enforcement must** be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account responsible for paying such expenses. A state employee may not be displaced as a result of using contract personnel.

(7) If a municipality administering a building inspection program under this section seeks to administer additional parts of a program, the municipality must comply with ORS 455.148, including the requirement that the municipality administer and enforce all aspects of the building inspection program. Thereafter, the municipality is subject to ORS 455.148 and ceases to be subject to this section.

(8) The department shall adopt rules to require the governing body of each municipality to submit a written plan with the notice required under subsection (4) of this section. If the department is the governing body, the department shall have a plan on file. The plan shall specify how cooperation with the State Fire Marshal or a designee of the State Fire Marshal will be achieved and how a uniform fire code will be considered in the review process of the design and construction phases of buildings or structures.

(9) A municipality that administers a code for which persons or businesses are authorized under ORS 455.457 to perform activities shall recognize and accept those activities as if performed by the municipality. A municipality is not required to accept an inspection, a plan or a plan review that does not meet the requirements of the state building code.

(10) The department or a municipality that accepts an inspection or plan review as required by this section by a person licensed under ORS 455.457 has no responsibility or liability for the activities of the licensee.

(11) In addition to the requirements of ORS 455.100 and 455.110, the director shall regulate building inspection programs of municipalities assumed prior to January 1, 2002. Regulation under this subsection [shall] **must** include but not be limited to:

- (a) Creating building inspection program application and amendment requirements and procedures;
- (b) Granting or denying applications for building inspection program authority and amendments;
- (c) Reviewing procedures and program operations of municipalities;
- (d) Creating standards for efficient, effective, timely and acceptable building inspection programs;
- (e) Creating standards for justifying increases in building inspection program fees adopted by a municipality;
- (f) Creating standards for determining whether a county or department building inspection program is economically impaired [in its ability] **because of the county's or the department's inability** to reasonably continue providing the program or part of the program throughout a county, if another municipality is allowed to provide a building inspection program or part of a program within the same county; and
- (g) Enforcing the requirements of this section.

(12) The department may assume administration and enforcement of a building inspection program:

- (a) During the pendency of activities under ORS 455.770;
- (b) If a municipality abandons any part of the building inspection program or is no longer able to administer the building inspection program; [and] **or**
- (c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

(13) If the department assumes the administration and enforcement of a building inspection program under this section, in addition to any other power granted to the director, the director may:

- (a) Enter into agreements with local governments under ORS 455.185 regarding the administration and enforcement of the assumed building inspection program;

(b) Take action as described in ORS 455.192 to ensure that sufficient staff and other resources are available for the administration and enforcement of the assumed building inspection program; [and]

(c) Charge fees described in ORS 455.195 for department services provided in administering and enforcing the assumed building inspection program[.]; and

(d) Ratify or disapprove the discretionary decisions of a contract building official, as both terms are defined in section 2 of this 2021 Act, to the extent that a municipality could ratify or disapprove the discretionary decisions of the municipality's contract building official.

(14) If a municipality abandons or otherwise ceases to administer all or part of a building inspection program described in this section, the municipality may not resume the administration and enforcement of the abandoned program or part of a program for at least two years. The municipality may resume the administration and enforcement of the abandoned program or part of a program only on July 1 of an odd-numbered year. To resume the administration and enforcement of the abandoned program or part of a program, the municipality must comply with ORS 455.148, including the requirement that the municipality administer and enforce all aspects of the building inspection program. Thereafter, the municipality is subject to ORS 455.148 and ceases to be subject to this section.

(15) A municipality that administers and enforces a building inspection program under this section shall include in the program the inspection of boilers and pressure vessels described in subsection (1)(a)(H) of this section.

SECTION 10. ORS 455.715 is amended to read:

455.715. As used in ORS 455.715 to 455.740, unless the context otherwise requires:

(1) "Building official" means a person charged by a municipality with responsibility for administration and enforcement of the state building code in the municipality.

(2) "Business of providing prefabricated structure plan approvals and inspections" means an independent contractor providing prefabricated structure plan approval or inspection services, or both, under the following specialty codes, as provided in **this section and** ORS 455.020[,] and 455.705 [and 455.715]:

- (a) Structural;
- (b) Mechanical;
- (c) Plumbing;
- (d) Electrical; and
- (e) Low-rise residential dwelling.

(3) "Inspector" means:

(a) A person, including a plans examiner, acting under the authority and direction of a building official and charged with the responsibility of routine enforcement of one or more specialty codes or parts of specialty codes;

(b) A person, including a plans examiner, who provides enforcement of one or more specialty codes or parts of specialty codes and who is personally in the business of providing prefabricated structure plan approvals or inspections or is employed by such a business;

(c) A specialized building inspector certified under ORS 455.723 who is employed **or otherwise authorized** by a municipality or by the Department of Consumer and Business Services;

(d) A person employed **or otherwise authorized** by a municipality or the department who is certified under ORS 455.732 to perform inspections under one or more specialty codes throughout a building code administrative region; or

(e) A person designated by the Director of the Department of Consumer and Business Services to ensure compliance with a specialty code or with any requirement for a license, registration, certification, endorsement or other authorization to perform work related to the administration and enforcement of the state building code.

SECTION 11. ORS 455.732 is amended to read:

455.732. (1) As used in this section, “building code administrative region” means a region established by the Director of the Department of Consumer and Business Services under ORS 455.042 for the uniform administration of the state building code.

(2) The authority of the director under ORS 455.720 and 455.723 to specify terms, conditions and classifications for the certification of inspectors includes the authority to certify an inspector to perform inspections under multiple specialty codes or parts of a specialty code.

(3) The director may provide for an inspector who is likely to be employed **or otherwise authorized** within a specific building code administrative region to be certified to perform inspections throughout a building code administrative region, whether within or outside of a municipality. The director may recognize any training program certified by the director under ORS 455.723 or 455.725 for purposes of certifying an inspector to perform inspections throughout a building code administrative region. This subsection does not require a municipality administering and enforcing a building inspection program under ORS 455.148 or 455.150 to allow an inspector certified under this subsection who is not employed **or otherwise authorized** by the municipality to perform building inspections on behalf of the municipality.

(4) In determining the appropriate experience, training or other qualifications for an inspector under ORS 455.720 or 455.723, the director shall consult with the appropriate advisory boards. The factors to be considered by the director may include, but need not be limited to:

(a) Any factors specific to, or of particular relevance to, a specialty code or to the types of buildings, structures, systems or equipment in a geographic area that are inspected under the specialty code;

(b) Staffing levels or other specific criteria for building inspection programs established by a municipality [*where*] **within which** the inspector is likely to be employed **or otherwise authorized to perform inspections**, or for building inspection programs established by the director; and

(c) Any factors specific to, or of particular relevance to, the building code administrative region within which the inspector is likely to be employed **or otherwise authorized to perform inspections**.

(5) In determining the scope of certifications and qualifications for an inspector, the director may utilize field training equivalency, independent evaluations or other methods the director deems appropriate.

SECTION 12. ORS 455.740 is amended to read:

455.740. (1) Subject to ORS chapter 183, the Director of the Department of Consumer and Business Services may deny, condition, suspend, revoke or refuse to renew a certificate of a building official or inspector if the director finds that the building official or inspector has:

(a) Consistently failed to act in the public interest in the performance of duties;

(b) Failed to complete the continuing education requirements as required under ORS 455.720 (4);

(c) Provided false information to the department; or

(d) Committed an act described in ORS 455.125 or 455.129.

(2) In any revocation proceeding under this section, the municipality that **appoints or** employs the building official or inspector [*shall be entitled to*] **may** appear as a party in interest, either for or against the revocation.

(3) When a certification is suspended or revoked under this section, the director may also suspend, deny or place conditions on that person’s right to reapply for certification under ORS 455.735 for a period not to exceed 12 months.

(4) This section does not limit or otherwise affect the authority of a municipality to dismiss or suspend a building official or inspector at the discretion of the municipality.

(5) Notwithstanding the requirements of subsections (1) to (4) of this section, the director may adopt rules that:

(a) Allow certifications to be placed on inactive status; and

(b) Extend continuing education compliance requirements in case of illness or hardship.

Passed by Senate June 16, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 25, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State