

# Senate Bill 866

Sponsored by Senator ANDERSON, Representative GOMBERG

## 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**.

Permits municipality or Department of Consumer and Business Services to contract with person to administer and enforce building inspection program and act as building official.

Specifies conditions under which municipality may procure services from contract building official.

## A BILL FOR AN ACT

1  
2 Relating to building code enforcement; creating new provisions; and amending ORS 455.148, 455.150,  
3 455.715, 455.732 and 455.740.

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

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

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

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

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

14 (c) "Discretionary decision" means:

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

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

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

19 (A) Before exercising oversight over a contract building official, completed, with any ap-  
20 plicable certification or other evidence of completion, basic training that the director deter-  
21 mines is necessary; and

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

25 (2)(a) Notwithstanding ORS 455.148 (3) and 455.150 (3), a city that procured services from  
26 a contract building official on or after January 1, 2018, and before the effective date of this  
27 2021 Act may continue to procure or may again procure services from a contract building  
28 official on and after the effective date of this 2021 Act only if the city complies with the  
29 provisions of sections 2 to 5 of this 2021 Act. A city that did not procure services from a  
30 contract building official before January 1, 2018, may not procure services from a contract

**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 **building official unless:**

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

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

8 (b) A county may procure services from a contract building official after the effective  
9 date of this 2021 Act only if the county complies with the provisions of sections 2 to 5 of this  
10 2021 Act and only if the county's procurement occurs for the periods and under the circum-  
11 stances described for cities in paragraph (a)(A) and (B) of this subsection.

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

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

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

22 (b)(A) A city need not establish a local board if the county within which the city is lo-  
23 cated, or an adjacent county, has a local board that hears, in accordance with this section,  
24 all appeals of the discretionary decisions of the city's contract building official. A county  
25 need not establish a local board if an adjacent county has a local board that hears, in ac-  
26 cordance with this section, all appeals of the discretionary decisions of the county's contract  
27 building official or the discretionary decisions of all contract building officials for cities lo-  
28 cated within the county.

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

32 (c) A local board that a city establishes under paragraph (a) of this subsection must in-  
33 clude as a member the building official of the county within which the city is located or the  
34 building official of an adjacent county. A local board that a county establishes under para-  
35 graph (a) of this subsection must include as a member a building official from an adjacent  
36 county.

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

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

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

4       **(5)(a) The appeal rights to which a permit applicant is entitled before a local board de-**  
5 **scribed in subsection (4) of this section must be in addition to and not in lieu of any other**  
6 **rights of appeal the permit applicant may have. A municipality shall require a permit appli-**  
7 **cant to submit any appeal within 30 days after receiving a notice concerning the permit ap-**  
8 **plication under subsection (3) of this section and the local board must review and issue a**  
9 **determination of the appeal within 30 days after receiving notice of the appeal.**

10       **(b) In an appeal under subsection (4) of this section, a permit applicant must establish**  
11 **by a preponderance of the evidence that overturning the discretionary decision of the con-**  
12 **tract building official will not create a dangerous or unsafe condition or decrease the mini-**  
13 **imum fire and life safety standards set forth in the relevant code.**

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

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

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

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

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

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

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

39       **(C) Issue subpoenas, subject to the authorization of the Attorney General, to persons or**  
40 **for records for the purpose of obtaining testimony, documents and information about a**  
41 **municipality's official actions or omissions and the actions or omissions of a contract build-**  
42 **ing official, including information that is subject to public inspection under ORS 192.311 to**  
43 **192.478.**

44       **(b) Before taking an action under paragraph (a) of this subsection, the director shall**  
45 **notify the municipality and the contract building official that are the subjects of the**

1 director's intended action. In the notice, the director shall set forth the reasons the director  
2 believes a violation has occurred and cite any applicable statutes or rules. The director may  
3 immediately take an action described in paragraph (a) of this subsection if the director does  
4 not receive a satisfactory response within 30 days after the date of the director's notice.

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

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

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

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

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

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

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

25 (i) Employ a building official;

26 (ii) Appoint a building official in cooperation with another municipality and agree with  
27 the other municipality that the building official shall perform services for both munici-  
28 palities; or

29 (iii) Abandon the municipality's building inspection program in accordance with ORS  
30 455.148 and 455.150; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33       **SECTION 8. ORS 455.148 is amended to read:**

34       **455.148. (1)(a) A municipality that assumes the administration and enforcement of a building in-**  
 35 **spection program shall administer and enforce the program for all of the following:**

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

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

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

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

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

42       **(F) Manufactured dwelling alterations regulated under ORS 446.155.**

43       **(G) Accessory buildings or structures under ORS 446.253.**

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

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

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

3 (B) Elevator programs under ORS 460.005 to 460.175;

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

5 (D) Prefabricated structure regulation under ORS chapter 455;

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

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

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

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

17 [(3)] **(3)(a)** *[When]* **If** a municipality administers a building inspection program, the governing  
18 body of the municipality shall, unless other means are already provided, appoint **or employ** a person  
19 to **serve as a building official, who will** administer and enforce the building inspection program[,  
20 *who shall be known as the building official*]. **Under the circumstances described in section 2 (2)**  
21 **of this 2021 Act, a municipality may for the same purpose enter into a contract with a con-**  
22 **tract building official, as defined in section 2 of this 2021 Act.** A building official **or contract**  
23 **building official** shall, in the municipality *[for which]* **that** appointed **or employed the building**  
24 **official or that contracted with the contract building official**, attend to all aspects of code  
25 enforcement, including the issuance of all building permits. Two or more municipalities may combine  
26 in the appointment of a single building official **or in a contract for a single contract building**  
27 **official** for the purpose of administering a building inspection program within *[their communities]*  
28 **each municipality.**

29 **(b) A contract between a municipality and a contract building official is subject to appli-**  
30 **cable provisions of ORS chapters 279A, 279B and 279C.**

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

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

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

44 (6) If a county does not notify the director, or notifies the director that *[it]* **the county** will not  
45 administer and enforce a building inspection program, the director shall contract with a municipality

1 or other person or use such state employees or state agencies as are necessary to administer and  
 2 enforce a building inspection program, and permit or other fees arising [*therefrom shall*] **from the**  
 3 **building inspection program must** be paid into the Consumer and Business Services Fund created  
 4 by ORS 705.145 and credited to the account responsible for paying the expenses [*thereof*] **of the**  
 5 **department related to administering and enforcing the building inspection program**. A state  
 6 employee may not be displaced as a result of using contract personnel.

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

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

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

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

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

28 (a) Creating building inspection program application and amendment requirements and proced-  
 29 ures;

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

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

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

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

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

38 (D) Proposed staffing levels; and

39 (E) Proposed service levels;

40 (d) Reviewing procedures and program operations of municipalities;

41 (e) Creating standards for efficient, effective, timely and acceptable building inspection pro-  
 42 grams;

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

45 (g) Creating standards for determining whether a county or department building inspection

1 program is economically impaired [*in its ability*] **because of the county's or the department's**  
 2 **inability** to reasonably continue providing the program throughout a county, if another municipality  
 3 is allowed to provide a building inspection program within the same county; and

4 (h) Enforcing the requirements of this section.

5 (12) The department may assume administration and enforcement of a building inspection pro-  
 6 gram:

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

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

10 (c) If a municipality fails to substantially comply with any provision of this section or of ORS  
 11 455.465, 455.467 and 455.469.

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

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

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

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

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

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

30 **SECTION 9.** ORS 455.150 is amended to read:

31 455.150. (1) Except as provided in subsection (15) of this section, a municipality that assumes the  
 32 administration and enforcement of a building inspection program prior to January 1, 2002, may ad-  
 33 minister and enforce all or part of a building inspection program. A building inspection program:

34 (a) Is a program that includes the following:

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

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

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

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

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

41 (F) Manufactured dwelling alterations regulated under ORS 446.155.

42 (G) Accessory buildings or structures under ORS 446.253.

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

44 (b) Is not a program that includes:

45 (A) Boiler and pressure vessel programs under ORS 480.510 to 480.670 except those described



1 in rules adopted under ORS 480.525 (5);

2 (B) Elevator programs under ORS 460.005 to 460.175;

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

4 (D) Prefabricated structure regulation under ORS chapter 455;

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

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

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

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

16 [(3)] **(3)(a)** *[When]* **If** a municipality administers a building inspection program, the governing  
17 body of the municipality shall, unless other means are already provided, appoint **or employ** a person  
18 to **serve as a building official, who will** administer and enforce **all or parts of** the building in-  
19 spection program *[or parts thereof, who shall be known as the building official]*. **Under the circum-**  
20 **stances described in section 2 (2) of this 2021 Act, a municipality may for the same purpose**  
21 **enter into a contract with a contract building official, as defined in section 2 of this 2021 Act.**  
22 A building official **or contract building official** shall, in the municipality *[for which]* **that** appointed  
23 **or employed the building official or contracted with the contract building official**, attend to  
24 all aspects of code enforcement, including the issuance of all building permits. Two or more  
25 municipalities may combine in the appointment of a single building official **or in a contract with**  
26 **a single contract building official** for the purpose of administering a building inspection program  
27 within *[their communities]* **each municipality**.

28 **(b) A contract between a municipality and a contract building official is subject to appli-**  
29 **cable provisions of ORS chapters 279A, 279B and 279C.**

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

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

40 (5) If a city does not notify the director, or notifies the director that *[it]* **the city** will not ad-  
41 minister **all or parts of** certain specialty codes *[or parts thereof]* under the building inspection pro-  
42 gram, the county or counties *[in]* **within** which the city is located shall administer and enforce those  
43 codes or parts *[thereof]* **of the codes** within the city in the same manner as *[it administers and en-*  
44 *forces them]* **the county or counties administer and enforce the codes or parts of the codes**  
45 outside the city, except as provided by subsection (6) of this section.

1 (6) If a county does not notify the director, or notifies the director that *[it]* **the county** will not  
2 administer and enforce **all or parts of** certain specialty codes *[or parts thereof]* under the building  
3 inspection program, the director shall contract with a municipality or other person or use such state  
4 employees or state agencies as are necessary to administer and enforce those codes or parts  
5 *[thereof]* **of the codes**, and permit or other fees arising *[therefrom shall]* **from the administration**  
6 **and enforcement must** be paid into the Consumer and Business Services Fund created by ORS  
7 705.145 and credited to the account responsible for paying such expenses. A state employee may not  
8 be displaced as a result of using contract personnel.

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

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

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

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

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

30 (a) Creating building inspection program application and amendment requirements and proce-  
31 dures;

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

33 (c) Reviewing procedures and program operations of municipalities;

34 (d) Creating standards for efficient, effective, timely and acceptable building inspection pro-  
35 grams;

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

38 (f) Creating standards for determining whether a county or department building inspection pro-  
39 gram is economically impaired *[in its ability]* **because of the county's or the department's ina-**  
40 **bility** to reasonably continue providing the program or part of the program throughout a county, if  
41 another municipality is allowed to provide a building inspection program or part of a program within  
42 the same county; and

43 (g) Enforcing the requirements of this section.

44 (12) The department may assume administration and enforcement of a building inspection pro-  
45 gram:

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

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

4 (c) If a municipality fails to substantially comply with any provision of this section or of ORS  
5 455.465, 455.467 and 455.469.

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

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

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

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

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

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

27 (15) A municipality that administers and enforces a building inspection program under this sec-  
28 tion shall include in the program the inspection of boilers and pressure vessels described in sub-  
29 section (1)(a)(H) of this section.

30 **SECTION 10.** ORS 455.715 is amended to read:

31 455.715. As used in ORS 455.715 to 455.740, unless the context otherwise requires:

32 (1) “Building official” means a person charged by a municipality with responsibility for admin-  
33 istration and enforcement of the state building code in the municipality.

34 (2) “Business of providing prefabricated structure plan approvals and inspections” means an in-  
35 dependent contractor providing prefabricated structure plan approval or inspection services, or both,  
36 under the following specialty codes, as provided in **this section and** ORS 455.020[,] **and** 455.705 *[and*  
37 *455.715]*:

38 (a) Structural;

39 (b) Mechanical;

40 (c) Plumbing;

41 (d) Electrical; and

42 (e) Low-rise residential dwelling.

43 (3) “Inspector” means:

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

1 or parts of specialty codes;

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

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

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

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

14 **SECTION 11.** ORS 455.732 is amended to read:

15 455.732. (1) As used in this section, “building code administrative region” means a region es-  
 16 tablished by the Director of the Department of Consumer and Business Services under ORS 455.042  
 17 for the uniform administration of the state building code.

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

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

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

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

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

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

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

45 **SECTION 12.** ORS 455.740 is amended to read:

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

- 4       (a) Consistently failed to act in the public interest in the performance of duties;
- 5       (b) Failed to complete the continuing education requirements as required under ORS 455.720 (4);
- 6       (c) Provided false information to the department; or
- 7       (d) Committed an act described in ORS 455.125 or 455.129.

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

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

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

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

- 18      (a) Allow certifications to be placed on inactive status; and
- 19      (b) Extend continuing education compliance requirements in case of illness or hardship.

20