

**Proposed Amendments to
Senate Bill 224
of
82nd Oregon Legislative Assembly
2023 Regular Session**

proposed by:
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Richard Balkins

I am the managing principal of Astoria Building Design, LLC. My position regarding this bill is largely in support of the Bill but I am also proposing an amendment to the Bill as outlined below with commentary in green with proposed amendments in red.

Commentaries are meant to provide “legislative intent” to the proposed amendment to the Bill preferably adopted with the amendments versus a separate Bill filing. Part of it relates to updating the exemption with the rest of modernization but also reflecting that the basic core language of exemption in ORS 671.030 (Section 4 of this Bill) had not fundamentally changed since 1935. My proposal being the biggest change since then. Since 1935, Oregon has adopted statewide building codes, accessibility standard in reflection of the ADA Act. The state also adopted Bills relating to land-use that effects land use / zoning laws requiring changes to require allowance of ADUs and MFRs in land use zones permitting residential use. To allow and enable maximum available resources of building design professionals for designing ADUs and such including attached ADUs to SFRs, amendments to ORS 671.030 is needed. A relatively small increase in ground area and height is also proposed to reflect modern day with statewide building codes and customary professional practices. The goal does not displace or eliminate architects or engineers involved. Some other states already exempt commercial buildings with larger ground area than proposed. 3 stories above grade and one basement story limit with regards to Multi-family dwellings (such as apartments and townhouses), and smaller scale commercial buildings, are reasonable for non-architects that are building design professionals to design with conventional construction especially now with state wide building codes.

Thank you for your time and consideration.

Senate Bill 224

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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**. **Notes in RED is proposed amendments to SB224 by me. Commentary in Green.**

Updates and modernizes statutes that regulate practice of architecture in this state to conform with actual current practice of architecture.

A BILL FOR AN ACT

Relating to the regulation of the practice of architecture in this state; creating new provisions; amending ORS 455.062, 455.628, 671.010, 671.020, 671.025, 671.030, 671.041, 671.045, 671.047, 671.050, 671.065, 671.080, 671.085, 671.090, 671.100, 671.120, 671.125, 671.220 and 671.990; repealing ORS 671.060 and 671.105; and prescribing an effective date.

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

SECTION 1. ORS 671.010 is amended to read:

671.010. As used in ORS 671.010 to 671.220[, *unless the context requires otherwise*]:

[(1) "Architect" means an individual qualified and registered to practice architecture under ORS 671.010 to 671.220, a consulting architect or a foreign architect.]

[(2) "Board" means the State Board of Architect Examiners.]

[(3) "Building" means any structure consisting of foundations, floors, walls and roof, having footings, columns, posts, girders, beams, joists, rafters, bearing partitions, or a combination of any number of these parts, with or without other parts or appurtenances thereto.]

[(4) "Consulting architect" means a person who is licensed or registered by a jurisdiction in the United States or Canada to use the title of "Architect" and engage in the unlimited practice of architecture and who is not subject to practice restrictions as the result of disciplinary action by any architect licensing or registration board.]

[(5) "Firm" means a corporation, limited liability company or partnership operating under a corporate or assumed business name and engaging in the provision of architectural services.]

[(6) "Foreign architect" means a person who is licensed or registered by a country other than the United States or Canada to use the title of "Architect" and engage in the unlimited practice of architecture and who is not subject to practice restrictions as a result of disciplinary action by the architect licensing or registration board issuing the license or registration.]

[(7) "Practice of architecture" means the planning, designing or observing of the erection, enlargement or alteration of any building or of any appurtenance thereto other than exempted buildings.]

[(8) "Registered professional engineer" has the meaning given that term in ORS 672.002.]

(1) "Architect" means a registered architect or a foreign architect.

(2) "Architectural firm" means a business entity that, for compensation, provides the services of an architect or engages in the practice of architecture.

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.

- (3) **“Building”** means a structure that has the purpose of supporting or sheltering any use or occupancy.
- (4) **“Business entity”** means a partnership, limited partnership, corporation, professional corporation, limited liability company, business trust, joint venture or other form of business organization the constituent parts of which share a common economic interest.
- (5) **“Construction phase services”** means services an architect provides for the purpose of determining that construction work on a building is proceeding generally in accordance with requirements set forth in a technical submission
- (6) **“Foreign architect”** means a person that has a valid license or registration from a jurisdiction other than this state that authorizes the person to engage in the practice of architecture within the jurisdiction that issued the license or registration.
- (7) **“Foreign architectural firm”** means a business entity that has a valid license or registration from a jurisdiction other than this state that authorizes the business entity to engage in the practice of architecture within the jurisdiction that issued the license or registration.
- (8) **“Practice of architecture”** means engaging in the art and science of designing, in whole or in part, buildings and the space within and appurtenant to buildings and providing related services that include, but are not limited to, planning, developing design concepts, preparing technical submissions and other documents that define a building’s form and function, coordinating construction work and the work of other consultants and providing construction phase services.
- (9) **“Registered architect”** means an individual who has a valid certificate of registration issued by the State Board of Architect Examiners under ORS 671.010 to 671.220 that authorizes the individual to engage in the practice of architecture within this state.
- (10) **“Registered architectural firm”** means a business entity that has a valid certificate of registration issued by the State Board of Architect Examiners under ORS 671.010 to 671.220 that authorizes the business entity to engage in the practice of architecture within this state.
- (11) **“Responsible control”** means a degree of control over an operation that is consistent with the scope of a registered architect’s professional knowledge and the application of a registered architect’s professional standard of care.
- [(9)] (12) **“State building code”** has the meaning given that term in ORS 455.010.
- (13) **“Technical submission”** means a plan, design, drawing, blueprint or other document that an architect prepares in connection with the practice of architecture and submits to a regulatory authority to comply with the state building code, a municipal building code or related rules, ordinances, resolutions or other regulatory requirements.
- (14) **“Story”** means the portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. A story is measured as a vertical distance from top to top of two successive tiers of finish floor surfaces and, for topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the rafters.
- (15) **“Grade Plane”** means a reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the property lot line or where a property lot line is more than 6 feet (1829mm) from the building, between the building and a point 6 feet (1829mm) from the building.
- (16) **“Story Above Grade Plane”** means any story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor next above is more than 6 feet (1829mm) above grade plane or more than 12 feet (3658mm) above the finished ground level at any point.
- (17) **“Basement”** means a story that is not a story above grade plane.

(18) “Accessory dwelling unit” means a residential structure that is used in connection with or that is auxiliary to a single-family dwelling.

(19) “attached Accessory Dwelling Unit” is an accessory dwelling unit attached to a single family residential dwelling. Examples includes but not limited to, conversion of a basement or attached garage to residential living space use or attached addition or accessory structure used as a residential dwelling.

(20) “zero lot line building”, as used in ORS 671.030, shall mean a building that is built up to within 1 foot or less of one or more of the property lines, of the tax lot the building is to be located or built upon, and may share one or more common wall(s) on the lot line(s) with one or more adjacent buildings or residential dwellings or accessory dwelling unit or accessory structure or appurtenances to a residential dwelling or farm building, but shall not have an interconnecting interior egress to or from an adjacent building through any shared common walls. Zero-lot line buildings shall have open space or sidewalk or pedestrian egress on at least one side.

(21) “mixed use buildings”, as used in ORS 671.030, shall mean a building that is used for two or more occupancy or use classification as defined in the state building code but not a “zero lot line building” as defined in ORS 671.010.

SECTION 2. ORS 671.020 is amended to read:

671.020. *[(1) In order to safeguard health, safety and welfare and to eliminate unnecessary loss and waste in this state, a person may not engage in the practice of architecture or assume or use the title of "Architect" or any title, sign, cards or device indicating, or tending to indicate, that the person is practicing architecture or is an architect or represent in any manner that the person is an architect, without first qualifying before the State Board of Architect Examiners and obtaining a certificate of registration as provided by ORS 671.010 to 671.220.]*

[(2) Notwithstanding subsection (1) of this section, a consulting architect may engage in the practice of architecture if the consulting architect:]

[(a) Is affiliated with an Oregon-registered architect who is in responsible charge of all aspects of the architectural services provided; and]

[(b) Uses the designation of "Consulting Architect, in consultation with," followed by the name of the Oregon-registered architect described in paragraph (a) of this subsection and the name of the architectural firm.]

[(3) Notwithstanding subsection (1) of this section, a foreign architect may engage in the practice of architecture if:]

[(a) The foreign architect is affiliated with an Oregon-registered architect who is in responsible charge of all aspects of the architectural services provided;]

[(b) The foreign architect uses the designation of "Foreign Architect, in consultation with," followed by the name of the Oregon-registered architect described in paragraph (a) of this subsection and the name of the architectural firm; and]

[(c) The board determines that the jurisdiction in which the foreign architect is licensed or registered has adequate education and training standards. The board, by rule, may recognize agreements between a national certification organization and the foreign jurisdiction as proof of education and training standards.]

[(4) A person may not practice or attempt to practice the profession of architecture, or assume the title of "Architect," "Consulting Architect" or "Foreign Architect," or use in connection with the business of the person any words, letters or figures indicating the title of "Architect," "Consulting Architect" or "Foreign Architect" without first complying with ORS 671.010 to 671.220.]

[(5) Every registered architect shall, upon registration, obtain a stamp of the design authorized by the board. All drawings and the title page of all specifications intended for use as construction documents in the practice of architecture must bear the stamp of a registered architect and be signed by the architect. The stamp and signature constitute certification that the architect has exercised the requisite professional judgment about and made the decisions upon all matters embodied within those construction documents, that the documents were prepared either by the architect or under the direct control and supervision of the architect and that the architect accepts responsibility for the documents.]

[(6) Except as provided in ORS 671.041, an architect registered under ORS 671.010 to 671.220 may pursue the practice of architecture only under the architect's own name as that name appears in the certificate of registration.]

(1) Except as provided in subsection (2) of this section, an individual or business entity that does not have a valid certificate of registration from the State Board of Architect Examiners may not:

(a) Engage in the practice of architecture within this state;

(b) Assume or use a title, form of address or other designation within this state that indicates or reasonably could be understood to indicate that the individual is an architect or hat the individual or business entity engages in the practice of architecture; or

(c) State, declare, represent or otherwise purport in any title, sign, card, device, advertisement or other indication of the individual's or the business entity's business or occupation that the individual is an architect or that the individual or business entity engages in the practice of architecture within this state.

(2) An individual who does not have the certificate of registration under subsection (1) of this section may engage in the practice of architecture within this state and use a designation that indicates that the individual is an architect or engages in the practice of architecture if the individual:

(a) Is a foreign architect;

(b) Has a written agreement of affiliation with a registered architect or registered architectural firm under which the registered architect or registered architectural firm has responsible control over all aspects of the architectural services the individual provides; and

(c) Uses the designation “foreign architect, in consultation with” followed by the name of a registered architect and the registered architect’s registered architectural firm, if any, on all technical submissions, advertisements or other communications that purport to identify the foreign architect’s profession, occupation or business within this state.

(3) Upon receiving a certificate of registration from the board, a registered architect shall obtain a stamp that conforms with a design that the board specifies by rule. The stamp, when accompanied by the registered architect’s signature on any technical submission, constitutes the registered architect’s attestation that the registered architect has responsible control over the content of the technical submission. The registered architect is responsible for controlling the custody and use of the stamp.

(4) A registered architect may engage in the practice of architecture only under the registered architect’s own name, as that name appears on the certificate of registration, except that the registered architect may practice under the name or assumed business name of a registered architectural firm, as provided in ORS 671.041.

SECTION 3. ORS 671.025 is amended to read:

671.025. (1) Any person applying for a license or permit required under the laws of this state or **under** the ordinances of any jurisdiction in **this state within** which the person proposes to erect, construct, enlarge, alter, repair, move, improve, remove or convert a building shall submit an original or reproduction of the *[drawings and specifications]* **technical submissions** for the work proposed. The *[drawings and specifications]* **technical submissions** must:

(a) Bear the stamp **and signature** of a registered architect *[or registered professional engineer]* if the services of a registered architect *[or registered professional engineer]* are required under ORS 27 671.010 to 671.220; and

(b) Be *[drawn to scale with sufficient clarity]* **sufficiently clear** to indicate the nature and extent of the work proposed and that the work proposed conforms with the requirements of ORS 671.010 30 to 671.220, the state building code and any other applicable laws and ordinances.

(2) The *[drawings and specifications]* **technical submissions** must bear identification that includes, but is not limited to:

(a) The project name and location;

(b) The name, address and telephone number of the person responsible for *[the preparation of the 35 documents]* **preparing the technical submissions, including technical submissions the person prepared on behalf of another person;**

(c) The name, address and telephone number of the owner; and

(d) The date the documents were issued.

(3) Each jurisdiction that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement or repair of any building or structure shall require the signature and *[registration]* **an impression of the stamp described in ORS 671.020 (3)** on the *[drawings and specifications]* **technical submissions** from a person authorized to prepare the *[drawings and specifications]* **technical submissions**.

(4) The *[registration]* **registered architect's** stamp and signature on the *[drawings and specifications]* **technical submissions** *[of the architect or engineer preparing the drawings and specifications]* constitute compliance with this section.

[(5) This section does not apply to the issuance of permits if the preparation of the drawings and specifications for the construction, alteration, improvement or repair of a building or structure is exempt from the provisions of this section, except that the person preparing the drawings and specifications for others shall be so identified.]

(5) **An architect shall retain, for a period of not less than 10 years following the completion of the project for which the architect submitted technical submissions, records and documentation that demonstrate the architect's responsible control over the preparation of the technical submissions.**

SECTION 4. ORS 671.030 is amended to read:

671.030. (1) ORS 671.010 to 671.220 do not apply to the practice of **marine**, naval or landscape architecture [*or of engineering by a registered professional engineer or a person engaged in architecture or engineering work as an employee of an architect or registered professional engineer*].

(2) ORS 671.010 to 671.220 do not prohibit:

[(a) Draftsmen, clerks of the work, superintendents and other Employees of registered architects and registered professional engineers from acting under the instructions, control or supervision of their employers. A draftsman, clerk, superintendent or other employee may not use the designation “architect,” “architectural” or “architecture” unless registered under the provisions of ORS 671.010 to

671.220, or unless a title containing the designation is provided by rule of the State Board of Architect Examiners.]

[(b) A person from making drawings or specifications for, or observing the erection, enlargement or alteration of, a building, or an appurtenance to a building, if the building:]

(a) An employee of a registered architect from acting under the registered architect’s instruction, control or supervision. An employee who is not a registered architect may not use the designation “architect,” “registered architect” or “foreign architect” or the words “architecture” or “architectural” to describe the employee’s work unless a rule of the State Board of Architect Examiners provides otherwise.

(b) A person that is not an architect from preparing technical submissions or providing construction phase services related to erecting, enlarging or altering a building or an appurtenance to a building if the building or the appurtenance:

(A) Is [*to be used for*] a single family residential dwelling, **single family residential dwelling with up to one attached accessory dwelling unit, or a multi-family residential dwelling consisting of not more than 8 attached dwellings and with a height not more than three stories above grade plane and no more than one basement story, or farm building; [*or*]**

Commentary: The 8 attached dwellings and the three stories above grade plane & one basement story applies to multi-family dwellings not single family residential dwellings and single family residential dwellings with an attached accessory dwelling unit. This proposed amendment to ORS 671.030 (2)(b) (A) and (B) is for expanding available professionals to facilitate affordable housing development especially with the adoption of House Bill 2001 back in 2019, and related Bills that may otherwise be non-exempt as ORS 671.030 is currently written and how the Bill had not amended the exemptions set forth to reflect issues like HB2001 back in 2019 and related Bills. Issues regarding health, safety, and welfare would be addressed by adequate enforcement of building codes, building codes amendments as needed, and use of engineering consultants as needed as well as the engineering law is not amended by this Bill and those amendments that I propose to this Bill. What is proposed are also exempt in other states. Washington exempts Multi-family Residential dwellings of any size up to 4 dwelling units. Idaho allows up to 3 units no more than three stories. Montana allows up to 8 units of any size units by persons who are not licensed architects. Usually, these people are professional building designers and contractors and often may involve engineering consultants.

(B) Is a structure used in connection with or auxiliary to a single family residential dwelling, **single family residential dwelling with up to one attached accessory dwelling unit, or a multi-family residential dwelling consisting of not more than 8 attached dwellings and with a height not more than three stories above grade plane and no more than one basement story, or farm building, including but not limited to a three-car garage, barn or shed or a shelter used for the housing of domestic animals or livestock[.]; **or****

[(c)] (C) [*A person from making drawings or specifications for, or observing the erection, enlargement or alteration of, a building, or an appurtenance to a building, if the building*] Has a ground area of **5,000 square feet or less and is not more than **three stories above grade plane and one basement story, where no story shall exceed 25 feet in height from from top surface of finish floor of the story to the highest point in interior finish of the story. This exemption also includes zero lot****

line buildings and mixed-use buildings. All buildings and appurtenances exempted under ORS 671.030(2)(b)(A) through (C), the building departments are authorized to require certain drawings to be prepared by an Oregon registered or licensed design professional such as but not limited to: architects, engineers, etc.

Commentary: The ground area is increased to 5,000 square feet. The ground area has not substantially changed since 1935. Buildings built today or on average largely. Partly due to the Americans with Disabilities Act (ADA), spatial requirements, and egress requirements. 5,000 sq.ft ground area is still within within the ground area typically built with conventional construction systems. As the Engineer’s act (ORS 672) is not being altered, situations within the building codes that would require certain technical submissions a registered design professional to prepare, would typically involve engineering services which is where the engineering laws comes into play. This coupled with competent building departments requiring certain drawings to be prepared by a registered design professional in the building codes, when they should is necessary for safeguarding public health, safety, and welfare. It’s not just the designer but the whole professional industry of designing and building the built environment that has a duty to uphold health, safety, and welfare. Nothing administered by humans will be absolutely perfect and fool proof. There are a number of states that allows persons who are not licensed architects to design buildings non-residential buildings with a ground area larger than 4,000 sq.ft. and some larger than that, such as 10,000 and 20,000 sq.ft. The height rule is also changed to three stories above grade plane and no more than one basement story like that for multi-family residential dwellings with one additional caveat, no story including basement story shall exceed 25-ft. Floor to highest overhead interior finish of the story. The 5,000 sq.ft. ground area includes zero-lot line buildings and buildings built up to one or more property lines abutting an adjacent building(s). If wall(s) is/are shared with that of another building, the lot line may be used for determining the ground area. Engineering services maybe involved and would be appropriate for building departments to require certain technical submissions to be prepared by an Oregon registered/licensed architect or engineer even if the overall designing of the building is prepared by a person who is not an architect or engineer.

[(d)] (c) A person **that is not an architect** from planning, designing, specifying or observing the alterations or repairs to **other buildings** if:

- (A) The structural part of the building, including but not limited to the foundation walls, floors, roof, footings, bearing partitions, beams, columns and joists, is not involved;
- (B) The building code classification by use or occupancy of the building is not changed; and
- (C) The building code classification by type of construction of the building is not changed.

[(e)] (d) A contractor [*or duly appointed superintendent or foreman*] from directing the work of erecting, enlarging or altering a building, or an appurtenance to a building, under the observation of a registered architect [*or under the supervision of a registered professional engineer*].

[(f)] (e) A person practicing marine, naval or landscape architecture from purporting to be a marine, naval or landscape architect if the work is confined and limited to those classifications.

[(g)] (f) A construction contractor licensed under ORS chapter 701 from offering services constituting the practice of architecture if:

(A) The construction contractor’s offer discloses in writing that the construction contractor is not an architect and identifies the registered architect or registered architectural firm that will provide the architectural services;

[(A)] **(B) The services are [*appurtenant*] ancillary to construction services [*to be provided by the*] the construction contractor will provide; and**

[(B)] **(C) A registered architect or registered architectural firm provides** the services constituting the practice of architecture. *[are performed by an architect registered under ORS 671.010 to 671.220 or provided by a firm registered under ORS 671.010 to 671.220; and]*

[(C) *The offer by the construction contractor discloses in writing that the contractor is not an architect and identifies the registered architect who will perform the services constituting the practice of architecture or the firm that will provide the architectural services.*]

SECTIONS 5 through 22 are not included in this proposed amendment to the Bill as they shall be as they are in the Bill or otherwise amended during the legislative process. I agree with the rest of the Bill. I choose to focus on a specific areas in the first four Sections of the Bill, as a proposed amendment to the Bill.

NOTE: Commentaries and special notes are NOT meant to be included with the Bill text and the proposed amendments to the Bill text. They are intentionally to provide a record for legislative intent of the proposed amendments of the Bill. They are made to provide guidance of intent but the proposed amended text is intended to be sufficiently clear.