House Bill 3613
Sponsored by Representative GARDNER (at the request of National Electrical Contractors Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor’s brief statement of the essential features of the measure as introduced.

Limits administration and enforcement of municipal building inspection programs to municipalities that have population greater than 35,000 persons.

Requires that municipal building inspection program include administration and enforcement of all aspects of state building code, specialty codes and related requirements that are subject to municipal enforcement.

A BILL FOR AN ACT

Relating to building inspection programs; creating new provisions; and amending ORS 455.150, 455.153, 455.156, 455.210, 455.220, 455.447 and 479.855.

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

SECTION 1. ORS 455.150 is amended to read:

455.150. (1) A municipality having a population greater than 35,000 persons may administer all or part of a building inspection program. A building inspection program:

(a) Is a program that includes:

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

(B) Manufactured structure 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; and

(G) Manufactured structure accessory buildings and structures under ORS 446.253.

(b) Is not a program that includes:

(A) Boiler and pressure vessel programs under ORS 480.510 to 480.665;

(B) Elevator programs under ORS 460.005 to 460.175;

(C) Amusement ride regulation under ORS 460.310 to 460.410;

(D) Prefabricated structure regulation under ORS chapter 455;

(E) Manufacture of manufactured structures 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 and 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

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.

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(3) When a municipality administers a building inspection program, the governing body of the municipality shall, unless other means are already provided, appoint a person to administer and enforce the building inspection program or parts thereof, who shall be known as the building official. A building official shall, in the municipality for which appointed, attend to all aspects of code enforcement, including the issuance of all building permits. Two or more municipalities that each have populations greater than 35,000 persons may combine in the appointment of a single building official for the purpose of administering a building inspection program within their communities.

(4)(a) By January 1 of the first year of each period of administration as provided preceding the expiration of the four-year period described in subsection (2) of this section, the governing body of each 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 the building inspection program after expiration of the four-year period. 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 will not administer [certain specialty codes or parts thereof] the building inspection program, the county or counties in which the city is located shall administer and enforce [those codes or parts thereof] the program within the city in the same manner as it administers and enforces [them] the program 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 will not administer and enforce [certain specialty codes or parts thereof] 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] the program, and permit or other fees arising therefrom shall be paid into the Consumer and Business Services Fund created by ORS 705.145 and credited to the account responsible for paying such expenses. [No] A state employee [shall] may not be displaced as a result of using contract personnel.

(7) The governing body of a municipality may [change its] commence or resume building [code] inspection program administration and enforcement responsibility beginning July 1 of any year by notifying the director by January 1. [of such year of the change to be made. Upon such change, responsibility shall be fixed as provided by subsections (5) and (6) of this section.]

(8) The Department of Consumer and Business Services shall adopt rules to require the governing body of [each] a municipality that administers and enforces a building inspection program to annually submit a written plan [with the notice required under subsection (4) of this section] for the program. 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] building inspection program must rec-
recognize and accept activities performed by persons or businesses [are] authorized under ORS 455.457 to perform the activities [shall recognize and accept those 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 shall have 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 of the Department of Consumer and Business Services shall regulate building inspection programs of municipalities. Regulation shall 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 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 of Consumer and Business Services may assume temporary administration 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
(c) If a municipality fails to substantially comply with any provision of this section or of ORS 455.465, 455.467 and 455.469.

SECTION 2. ORS 455.153 is amended to read:

455.153. (1) A municipality having a population greater than 35,000 persons may administer [any specialty code or building requirements] a building inspection program as though the state building code, specialty codes or related requirements were ordinances of the municipality, [if the municipality is authorized to administer:]

[(a) The specialty code under ORS chapter 447 or 455 or ORS 479.510 to 479.945.]
[(b) Mobile or manufactured dwelling parks requirements adopted under ORS 446.062.]
[(c) Temporary parks requirements adopted under ORS 446.105.]
[(d) Manufactured dwelling installation, support and tiedown requirements adopted under ORS 446.230.]
[(e) Park or camp requirements adopted under ORS 455.680.]

(2) Administration of [any specialty code or building requirement] a building inspection program includes all administrative and judicial aspects of enforcement of the state building code, specialty codes or [requirement] related requirements. Nothing in this section affects the concurrent jurisdiction of the Director of the Department of Consumer and Business Services, the Building Codes Structures Board, the State Plumbing Board, the Manufactured Structures and Parks Advisory
Board, or the Electrical and Elevator Board to impose civil penalties for violations committed within municipalities.

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

455.156. (1) Notwithstanding any other provision of this chapter, ORS chapter 693 or ORS 447.010 to 447.160, 479.510 to 479.945 or 479.990, the Department of Consumer and Business Services shall carry out the provisions of this section.

(2) All municipalities that establish a [plumbing, electrical or one and two family dwelling] building inspection program under ORS 455.150 may **investigate and enforce all aspects of the state building code, specialty codes and related requirements, including but not limited to:**

(a) [Investigate and enforce] Violations of ORS 479.550 (1) and 479.620 on behalf of the Electrical and Elevator Board as provided in this section;

(b) [Investigate and enforce] Violations of ORS 447.030, 447.040, 693.030 and 693.040 as provided in paragraph (c) of this subsection; and

(c) [Issue] Issuing notices of proposed assessment of civil penalties for violations of the statutes covered in paragraphs (a) and (b) of this subsection as agents of the respective boards following procedures adopted under subsection (3) of this section.

(3) The department shall establish:

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

(b) A program to provide that all of the moneys recovered by the department, less collection expenses, be paid to the municipality that initiated the charges when a person charged with a violation as provided in subsection (2)(a) or (b) of this section agrees to the entry of an assessment of civil penalty or does not ask for a hearing, and an order assessing a penalty is entered against the person;

(c) A program to provide a division of the moneys recovered by the department with the municipality that initiated the charges, when a person charged with a violation as provided in subsection (2)(a) or (b) of this section requests a hearing and is assessed a penalty. One-half of the amounts recovered shall be paid to the municipality. The department shall keep an amount equal to its costs of processing the proceeding and collection expenses out of the remaining one-half and remit the balance, if any, to the municipality; and

(d) A program [for contracting with municipalities] that allows municipalities [to investigate violations of the department's permit requirements for plumbing installations and services under the plumbing specialty code and for plumbing and electrical installations and services under the One and Two Family Dwelling Code, and] to:

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

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

(4)(a) It shall be a defense for any person charged with a penalty for violation of a building inspection program permit requirement covering plumbing installations under the plumbing specialty code, electrical permit requirements under ORS 479.550 or plumbing or electrical requirements under the One and Two Family Dwelling Code that the person was previously penalized for the same occurrence.

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

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

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

(ii) A civil penalty pursuant to ORS 479.830 for violation of ORS 479.550 for failure to obtain
an electrical permit;

(iii) A civil penalty pursuant to ORS 455.895 for failure to obtain an electrical permit under the
One and Two Family Dwelling Code; or

(iv) A municipal penalty, other than an investigative fee, for making an electrical installation
under the electrical specialty code or the One and Two Family Dwelling Code without a permit; or

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

(ii) A civil penalty pursuant to ORS 447.160 for failure to obtain a plumbing permit as required
under the plumbing specialty code;

(iii) A civil penalty pursuant to ORS 455.895 for failure to obtain a plumbing permit under the
One and Two Family Dwelling Code; or

(iv) A municipal penalty, other than an investigative fee, for making a plumbing installation
under the plumbing specialty code or the One and Two Family Dwelling Code without a permit.

SECTION 4. ORS 455.210 is amended to read:

455.210. (1) Fees shall be prescribed as required by ORS 455.020 for plan review and permits
issued by the Department of Consumer and Business Services for the construction, reconstruction,
alteration and repair of prefabricated structures and of buildings and other structures and the in-
stallation of mechanical heating and ventilating devices and equipment. The fees shall not exceed
130 percent of the fee schedule printed in the "Uniform Building Code," 1979 Edition, and in the
"Uniform Mechanical Code," 1979 Edition, both published by the International Conference of Build-
ing Officials. Fees shall not be effective until approved by the Oregon Department of Administrative
Services.

(2) Notwithstanding subsection (1) of this section, the maximum fee the Director of the Depart-
ment of Consumer and Business Services may prescribe for a limited plan review for fire and life
safety as required under ORS 479.155 shall be 40 percent of the prescribed permit fee.

(3)(a) A municipality may adopt by ordinance or regulation such fees as may be necessary and
reasonable to provide for the administration and enforcement of [any specialty code or codes] a
building inspection program for which the municipality has assumed responsibility under ORS
455.150.

(b) Ten or more persons or an association with 10 or more members may, within 30 days of the
adoption of a fee under paragraph (a) of this subsection, appeal the fee to the Director of the De-
partment of Consumer and Business Services. Within 60 days of the receipt of the appeal, the di-
rector shall, after notice to affected parties and hearing, review the municipality’s costs of
administering and enforcing the [specialty code or codes] building inspection program referred to
in paragraph (a) of this subsection and approve the fee if the director feels it is necessary and rea-
sonable. If the director does not approve the fee upon appeal, the fee shall not be effective. The
appeal process provided in this paragraph shall not apply to fees that have been submitted for a vote
and approved by a majority of the electors voting on the question.
(c) Fees collected by a municipality under this subsection shall be used for the administration and enforcement of a building inspection program for which the municipality has assumed responsibility under ORS 455.150.

(4) Notwithstanding any other provision of ORS 455.010 to 455.315 and 455.410 to 455.740, for the purpose of partially defraying state administrative costs, there is hereby imposed a surcharge in the amount of four percent of the total permit fees and hourly charges collected when an applicant chooses to pay an hourly rate instead of purchasing a permit. Municipalities shall collect and remit to the director as provided in ORS 455.220.

(5) Notwithstanding any other provisions of ORS 455.010 to 455.315 and 455.410 to 455.740, for the purpose of partially defraying state inspection costs, there is hereby imposed a surcharge in the amount of two percent of the total permit fees and hourly charges collected when an applicant chooses to pay an hourly rate instead of purchasing a permit. Municipalities shall collect and remit surcharges to the director as provided in ORS 455.220.

(6) Notwithstanding any other provision of ORS 455.010 to 455.315 and 455.410 to 455.740 and in addition to the surcharges imposed under subsections (4) and (5) of this section, for the purpose of partially defraying administration and operation costs of the Tri-County Building Industry Service Center, there is hereby imposed a surcharge not to exceed one percent of the total permit fees collected in Clackamas, Multnomah and Washington Counties. Municipalities shall collect and remit surcharges to the director as provided in ORS 455.220.

(7) The director shall adopt administrative rules to allow reduced fees for review of plans that have been previously reviewed.

**SECTION 5.** ORS 455.220 is amended to read:

455.220. (1) For the purpose of defraying the costs of training and other educational programs administered by the Department of Consumer and Business Services under this chapter there is hereby imposed a surcharge in the amount of one percent of the total building permit fees and hourly charges collected when an applicant chooses to pay an hourly rate instead of purchasing a permit in connection with the construction of, or addition or alteration to, buildings and equipment or appurtenances.

(2) Permit surcharges shall be collected by each municipality and remitted to the Director of the Department of Consumer and Business Services. Each municipality having a population greater than 40,000 persons shall, on a monthly basis, prepare and submit to the director a report of permits and certificates issued in each class or category and fees and surcharges thereon collected during the month, together with other statistical information as required by the director concerning construction activity regulated by [the parts of the state building code administered by] the municipality. All other municipalities shall submit such a report on a quarterly basis. The report, which shall be in a form prescribed by the director, shall be submitted, together with a remittance covering the surcharges collected, by no later than the 15th day following the month or quarter in which the surcharges are collected.

(3)(a) Except as provided in subsection (4) of this section, all surcharges and other fees prescribed by ORS 455.010 to 455.240 and 455.410 to 455.740 and payable to the department, except fees received under ORS 455.150 (6), shall be deposited by the director in the Consumer and Business Services Fund created by ORS 705.145.

(b) Notwithstanding subsection (4)(a) of this section, the training surcharge imposed under subsection (1) of this section for permits established under ORS 446.062 (3), 446.176, 446.405 (2), 446.430 (2) and 455.170 (2) shall be deposited in the Manufactured Structures and Parks Education Account.
of the Consumer and Business Services Fund established under ORS 705.145.

(4)(a) From the amount appropriated biennially to the department from the account created under ORS 705.145 for the purpose of defraying the costs of training and other educational programs under subsection (1) of this section, the director shall transfer to the Tri-County Building Industry Service Center Account established under ORS 705.720 an amount not to exceed one-half of the biennial appropriation.

(b) The director shall deposit funds received under ORS 455.210 (6) in the Tri-County Building Industry Service Center Account established under ORS 705.720.

(5) The director shall administer training and other education programs under this chapter through contracts with local educational institutions, professional associations or other training providers.

SECTION 6. ORS 455.447 is amended to read:

455.447. (1) As used in this section, unless the context requires otherwise:

(a) “Essential facility” means:

(A) Hospitals and other medical facilities having surgery and emergency treatment areas;

(B) Fire and police stations;

(C) Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(D) Emergency vehicle shelters and garages;

(E) Structures and equipment in emergency-preparedness centers;

(F) Standby power generating equipment for essential facilities; and

(G) Structures and equipment in government communication centers and other facilities required for emergency response.

(b) “Hazardous facility” means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.

(c) “Major structure” means a building over six stories in height with an aggregate floor area of 60,000 square feet or more, every building over 10 stories in height and parking structures as determined by Department of Consumer and Business Services rule.

(d) “Seismic hazard” means a geologic condition that is a potential danger to life and property which includes but is not limited to earthquake, landslide, liquefaction, tsunami inundation, fault displacement, and subsidence.

(e) “Special occupancy structure” means:

(A) Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;

(B) Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;

(C) Buildings for colleges or adult education schools with a capacity greater than 500 persons;

(D) Medical facilities with 50 or more resident, incapacitated patients not included in subparagraphs (A) to (C) of this paragraph;

(E) Jails and detention facilities; and

(F) All structures and occupancies with a capacity greater than 5,000 persons.

(2) The Department of Consumer and Business Services shall consult with the Seismic Safety Policy Advisory Commission and the State Department of Geology and Mineral Industries prior to adopting rules. Thereafter, the Department of Consumer and Business Services may adopt rules as
set forth in ORS 183.325 to 183.410 to amend the state building code to:

(a) Require new building sites for essential facilities, hazardous facilities, major structures and
special occupancy structures to be evaluated on a site specific basis for vulnerability to seismic
geologic hazards.

(b) Require a program for the installation of strong motions accelerographs in or near selected
major buildings.

(c) Provide for the review of geologic and engineering reports for seismic design of new
buildings of large size, high occupancy or critical use.

(d) Provide for filing of noninterpretive seismic data from site evaluation in a manner accessible
to the public.

(3) For the purpose of defraying the cost of applying the regulations in subsection (2) of this
section, there is hereby imposed a surcharge in the amount of one percent of the total fees collected
under the structural and mechanical specialty codes for essential facilities, hazardous facilities,
major structures and special occupancy structures[, which] The fees shall be retained by the juris-
diction enforcing the particular specialty code under a building inspection program as provided
in ORS 455.150.

(4) Developers of new essential facilities, hazardous facilities and major structures described in
subsection (1)(a)(E), (b) and (c) of this section and new special occupancy structures described in
subsection (1)(el(A), (D) and (F) of this section that are located in an identified tsunami inundation
zone shall consult with the State Department of Geology and Mineral Industries for assistance in
determining the impact of possible tsunamis on the proposed development and for assistance in
preparing methods to mitigate risk at the site of a potential tsunami. Consultation shall take place
prior to submittal of design plans to the building official for final approval.

SECTION 7. ORS 479.855 is amended to read:

479.855. (1) In addition to the provisions of ORS 455.010 to 455.310 and 455.410 to 455.740, any
building inspection [and enforcement] program established by a city or county under ORS 455.150 is
subject to the provisions of this section. Where the provisions of this section conflict with provisions
under ORS 455.010 to 455.310 and 455.410 to 455.740, the provisions of this section shall control.

(2)(a) Except as otherwise provided in this section, any city or county that wishes to establish
a building inspection program under ORS [456.800] 455.150, [to enforce and administer ORS 479.510
to 479.945,] including a program for inspection under a master permit pursuant to ORS 479.560 (3),
must first make application to the Department of Consumer and Business Services. The program for
inspection under a master permit shall be delegated separately from the general electrical program
authorization. (The department may authorize the city or county to administer and enforce the pro-
visions of this section and ORS 479.540 and 479.560 if it finds that the city or county:
(A) Can comply with minimum standards adopted by the Electrical and Elevator Board by rule
for inspections, permit applications and other matters to [ assure] ensure adequate administration
and enforcement of ORS 479.510 to 479.945.
(B) Can conduct the electrical plan review, if required by the city or county, in a timely manner
and by qualified personnel who meet the standards adopted by rule by the board.
(b) In addition to administering and enforcing all other aspects of the state building code,
specialty codes and related requirements, the city or county administering and enforcing a building inspection program must assume full responsibility allowed under ORS 455.010 to 455.310 and 455.410 to 455.740 for the enforcement, inspection and administration of the electrical safety laws under that specialty code and ORS 479.510 to 479.945. [This subsection does not require a city or county to assume full responsibility for enforcement, inspection and administration of the electrical safety laws if the only enforcement performed by the city or county involves manufactured dwelling electrical utility connections.]

(3) The department, subject to ORS 183.310 to 183.550, shall revoke any authority of a city or county to carry on inspections, enforcement or administration of electrical installations and electrical products as part of a building inspection program under ORS 455.150 if the department determines that the city or county fails to comply with standards adopted by the board or otherwise is not effectively carrying out duties assumed by the city or county under this section.

(4)(a) Except as provided in paragraph (b) of this subsection, a city or county shall not contract with competing electrical contractors to provide permit inspection of electrical installations.

(b) A city or county may contract with competing electrical contractors to provide permit inspection of electrical installations on a temporary basis by a supervising electrician if:

(A) Emergency circumstances exist; and

(B) The city or county has requested that the department perform permit inspections and the department is unable to respond in a timely manner.

(c) Nothing in this subsection prohibits a city or county from contracting with another city or county to perform permit inspections of electrical installations by a supervising electrician.

(5) A city or county that performs electrical installation inspections shall perform license enforcement inspections as a part of routine installation inspections.

SECTION 8. The amendments to ORS 455.150, 455.153, 455.156, 455.210, 455.220, 455.447 and 479.855 by sections 1 to 7 of this 2001 Act apply to municipal building inspection programs commenced, continued or resumed on or after the effective date of this 2001 Act.