

A-Engrossed
Senate Bill 848

Ordered by the Senate April 12
Including Senate Amendments dated April 12

Sponsored by COMMITTEE ON JUDICIARY

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.

Extends provision relating to indemnification provisions in construction agreements to all types of damages.

[Provides that extent of obligation of person providing certain services to defend, indemnify or hold harmless another may be determined only after person's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by mutual agreement.]

Provides that public body may not include certain provisions relating to payment of defense costs in contract with person providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services.

A BILL FOR AN ACT

Relating to construction agreements; creating new provisions; and amending ORS 30.140.

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

SECTION 1. ORS 30.140 is amended to read:

30.140. (1) Except to the extent provided under subsection (2) of this section, any provision in a construction agreement that requires a person or that person's surety or insurer to indemnify another against liability for [*damage arising out of death or bodily injury to persons or damage to property*] **damages** caused in whole or in part by the negligence of the indemnitee is void.

(2) This section does not affect any provision in a construction agreement that requires a person or that person's surety or insurer to indemnify another against liability for [*damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises*] **damages to the extent that the damages arise** out of the fault of the indemnitor, or the fault of the indemnitor's agents, representatives or subcontractors.

(3) A public body as defined in ORS 174.109, including a public body acting as part of an intergovernmental entity formed with another state or with a political subdivision of another state, may not include a requirement in a contract with a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services, requiring that the person or entity pay for attorney fees, expert or investigation expenses or other defense costs incurred by the public body or intergovernmental entity in defending against a claim for professional negligence and relating to the professional services provided by the person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services, until after the person or entity's liability or fault is determined by adjudication or alternative dispute resolution or otherwise

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 **resolved by settlement agreement, but not to exceed the proportionate fault of the person**
2 **or entity. A contractual provision that violates this subsection is unenforceable until after**
3 **the person or entity’s liability or fault is determined by adjudication or alternative dispute**
4 **resolution or otherwise resolved by settlement agreement.**

5 [(3)] (4) As used in this section, “construction agreement” means any written agreement for the
6 planning, design, construction, alteration, repair, improvement or maintenance of any building,
7 highway, road excavation or other structure, project, development or improvement attached to real
8 estate including moving, demolition or tunneling in connection therewith.

9 [(4)] (5) This section does not apply to:

10 (a) Any real property lease or rental agreement between a landlord and tenant whether or not
11 any provision of the lease or rental agreement relates to or involves planning, design, construction,
12 alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or
13 rental agreement is not planning, design, construction, alteration, repair, improvement or mainte-
14 nance of real property; or

15 (b) Any personal property lease or rental agreement.

16 [(5)] (6) No provision of this section shall be construed to apply to a “railroad” as defined in
17 ORS 824.200.

18 **SECTION 2. The amendments to ORS 30.140 by section 1 of this 2023 Act apply to con-**
19 **struction agreements entered into or renewed on and after the effective date of this 2023**
20 **Act.**