

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	7 - 0 - 1
Yeas:	Conger, Doherty, Esquivel, Hoyle, Johnson, Kennemer, Schaufler
Nays:	0
Exc.:	Matthews
Prepared By:	Theresa Van Winkle, Administrator
Meeting Dates:	5/25

WHAT THE MEASURE DOES: Clarifies that construction agreement provisions are void to the extent that such provisions require a party or their surety or insurer to waive a right of subrogation, indemnity or contribution for amounts paid by reason of death or bodily injury or property damaged that is caused in whole or in part by another person's negligence. Clarifies exceptions. Declares an emergency, effective upon passage.

ISSUES DISCUSSED:

- History of ORS 30.140
- Assumption of responsibility of negligence
- Examples of construction contract provisions relating to liability
- Whether the amended measure violates the Oregon Supreme Court decision of *Walsh Construction v. Mutual of Enumclaw*
- Oregon Employer Liability Act

EFFECT OF COMMITTEE AMENDMENT: Replaces the A-engrossed measure.

BACKGROUND: Prior to the enactment of ORS 30.140, many construction agreements between owners and/or general and subcontractors included a clause that the subcontractor assumes liability not only for the negligent actions of the subcontractor and its employees but also the negligent actions of the general contractor and its employees. ORS 30.140 established that a construction indemnity agreement is void if it requires a subcontractor to indemnify the general contractor for the general's own fault, and declares that such construction agreements and insurance endorsements are valid to the degree that they indemnify and insure against the general contractor's liability if it arises out of the subcontractor's fault. The statute's intent was further clarified in case law (the Oregon Supreme Court's decision to uphold the Court of Appeals' decision of *Walsh Construction v. Mutual of Enumclaw*). However, it has been argued that the statute has continually been misinterpreted, as such clauses are currently included in some construction contracts.

Senate Bill 961-B adds clarification to the intent of ORS 30.140, in which each party identified in a construction contract is responsible for the ramifications and costs of its own negligence. The measure also maintains and clarifies the statute's current exemptions, which includes a waiver of subrogation, indemnity of contribution in a real property lease or rental agreement between a landlord and tenant or a personal property lease or rental agreement.