

A-Engrossed
Senate Bill 961

Ordered by the Senate May 2
Including Senate Amendments dated May 2

Sponsored by Senator MORSE

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.

Voids construction agreement provisions that require waiver of right [*to seek indemnity, contribution or reimbursement for damages incurred due to*] **of subrogation, indemnity or contribution for amounts paid by reason of loss caused by negligence of another party. Creates exceptions.**
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to construction agreements; creating new provisions; amending ORS 30.140; and declaring
3 an emergency.

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

5 **SECTION 1.** ORS 30.140 is amended to read:

6 30.140. (1) Except [*to the extent provided under subsection (2) of*] **as provided in** this section, any
7 provision in a construction agreement that requires a [*person*] **party** or that [*person's*] **party's**
8 surety or insurer to indemnify another against liability for damage arising out of death or bodily
9 injury to persons or damage to property caused in whole or in part by the negligence of the
10 indemnitee is void.

11 (2) **Subsection (1) of** this section does not affect any provision in a construction agreement that
12 requires a [*person*] **party** or that [*person's*] **party's** surety or insurer to indemnify another against
13 liability for damage arising out of death or bodily injury to persons or damage to property to the
14 extent that the death or bodily injury to persons or damage to property arises out of the fault of the
15 indemnitor, or the fault of the indemnitor's agents, representatives or subcontractors.

16 (3) **Except as provided in this section, a provision in a construction agreement is void if**
17 **the provision requires a party or that party's surety or insurer to waive a right of**
18 **subrogation, indemnity or contribution for amounts paid by reason of a loss caused in whole**
19 **or in part by the negligence of another person.**

20 (4) **Subsection (3) of this section does not affect a provision for waiver of subrogation,**
21 **indemnity or contribution in an insurance policy issued pursuant to ORS 737.602, or a pro-**
22 **vision for waiver of subrogation, indemnity or contribution that applies to proceeds of a**
23 **property insurance policy.**

24 [(3)] (5) As used in this section, "construction agreement" means any written agreement for the
25 planning, design, construction, alteration, repair, improvement or maintenance of any building,
26 highway, road excavation or other structure, project, development or improvement attached to real
27 estate including moving, demolition or tunneling in connection therewith.

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

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

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

8 [(5)] (7) No provision of this section shall be construed to apply to a ["railroad?"] as defined in
9 ORS 824.200.

10 **SECTION 2. The amendments to ORS 30.140 by section 1 of this 2011 Act apply only to**
11 **construction agreements entered into on or after the effective date of this 2011 Act.**

12 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
14 **on its passage.**

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