

Senate Bill 961

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 **as introduced**.

Voids construction agreement provisions that require waiver of right to seek indemnity, contribution or reimbursement for damages incurred due to negligence of another party.

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 this section, any provision in
7 a construction agreement that requires a *[person]* **party** or that *[person's]* **party's** surety or insurer
8 to indemnify another against liability for damage arising out of death or bodily injury to persons
9 or damage to property caused in whole or in part by the negligence of the indemnitee is void.

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

15 **(3) A provision in a construction agreement is void if the provision requires a party, or**
16 **a party's surety or insurer, to waive the right of the party, surety or insurer to seek**
17 **indemnity, contribution or reimbursement for damages incurred as a result of negligence of**
18 **another party to the construction agreement. The provisions of this subsection do not pre-**
19 **vent a party who is a co-insured under a joint insurance product, including but not limited**
20 **to owner-controlled or contractor-controlled insurance products, from waiving claims for**
21 **indemnification, contribution or reimbursement from another party who is a co-insured un-**
22 **der the product.**

23 *[(3)]* (4) As used in this section, "construction agreement" means any written agreement for the
24 planning, design, construction, alteration, repair, improvement or maintenance of any building,
25 highway, road excavation or other structure, project, development or improvement attached to real
26 estate including moving, demolition or tunneling in connection therewith.

27 *[(4)]* (5) This section does not apply to:

28 (a) Any real property lease or rental agreement between a landlord and tenant whether or not
29 any provision of the lease or rental agreement relates to or involves planning, design, construction,
30 alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or
31 rental agreement is not planning, design, construction, alteration, repair, improvement or mainte-

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 nance of real property; or

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

3 [(5)] (6) No provision of this section shall be construed to apply to a ["railroad"] as defined in
4 ORS 824.200.

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

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

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