

Fiscal: No Fiscal Impact

Revenue: No Revenue Impact

Action Date: 06/04/15

Action: Do Pass As Amended And Be Printed Engrossed.

Meeting Dates: 04/28, 06/04

Vote:

Yeas: 7 - Buehler, Fagan, Holvey, McLain, Nearman, Rayfield, Stark

Prepared By: Patrick Brennan, Committee Administrator

WHAT THE MEASURE DOES:

Amends and clarifies requirements for bringing claim against design professionals. Removes “construction” from term “construction design professional.” Defines “design professional.” Applies only to actions filed on or after the effective date.

ISSUES DISCUSSED:

- Purpose of evaluating design professionals
- Jurisdictional considerations
- Potential to increase cost of litigation
- Qualifications to testify
- Consistency between public and private sectors
- Whether there are repercussions for inaccurate testimony
- Geographic considerations
- Rationale of requirement for same or similar licensure

EFFECT OF COMMITTEE AMENDMENT:

Modifies definition of “design professional” to include persons credentialed in another state to practice as an architect, landscape architect, professional engineer or professional land surveyor. Deletes requirement for summary of alleged conduct to be included in complaint. Deletes exemption for public bodies.

BACKGROUND:

ORS 31.300 contains Oregon’s certificate of merit statute, which outlines requirements for bringing a claim against a design professional. Requirements include a certification by the claimant’s attorney that they have consulted a licensed design professional who is qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact concerning liability. The intent of the statute is to help determine which claims against design professionals lack basis and which warrant the courts’ attention. This is especially important as these actions are often complex, involve many parties, and may involve frivolous claims.

Senate Bill 383-B clarifies the certificate of merit statute by amending claim requirements. It does this by: 1) dropping “construction” from the term “construction design professional” to provide consistency as the term is used only in ORS 31.300; 2) defining “design professional” as a person registered under ORS chapters 671 (architects and landscape professionals) and 672 (engineers, land surveyors, photogrammetrists) or a person credentialed in another state; and 3) outlining what standards of professional skill and care a potential expert witness must address. Additionally, the measure applies only to complaints, cross-claims, counterclaims and third-party complaints filed on or after the effective date of the Act.