

SB 213-2
(LC 2530)
3/15/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of American Council of Engineering Companies-Oregon)

**PROPOSED AMENDMENTS TO
SENATE BILL 213**

1 On page 1 of the printed bill, delete lines 4 through 28 and delete page
2 2 and insert:

3 **“SECTION 1. ORS 30.140 is amended to read:**

4 **“30.140. (1) As used in this section:**

5 **“(a) ‘Construction agreement’ means any written agreement for the**
6 **planning, design, construction, alteration, repair, improvement or**
7 **maintenance of any building, highway, road excavation or other**
8 **structure, project, development or improvement attached to real es-**
9 **tate including moving, demolition or tunneling in connection there-**
10 **with.**

11 **“(b) ‘Design professional’ means:**

12 **“(A) A person or firm registered to practice architecture under ORS**
13 **671.010 to 671.220;**

14 **“(B) A person registered to practice landscape architecture under**
15 **ORS 671.310 to 671.459;**

16 **“(C) A person registered to practice engineering, land surveying or**
17 **photogrammetric mapping under ORS 672.002 to 672.325; or**

18 **“(D) A person or firm providing services identified in ORS 279C.100.**

19 **“[(1)] (2) Except to the extent provided under subsection [(2)] (3) of this**
20 **section, any provision in a construction agreement that requires a person or**
21 **that person’s surety or insurer to indemnify another against liability for**

1 damage arising out of death or bodily injury to persons or damage to prop-
2 erty caused in whole or in part by the negligence of the indemnitee is void.

3 **“(2) (3) Except as provided in subsection (4) of this section, this**
4 **section does not affect any provision in a construction agreement that re-**
5 **quires a person or that person’s surety or insurer to indemnify another**
6 **against liability for damage arising out of death or bodily injury to persons**
7 **or damage to property to the extent that the death or bodily injury to per-**
8 **sons or damage to property arises out of the fault of the indemnitor, or the**
9 **fault of the indemnitor’s agents, representatives or subcontractors.**

10 **“(4)(a) Any provision in a construction agreement that requires a**
11 **design professional to defend another against claims or damages aris-**
12 **ing from, or alleged to arise from, negligence of a design professional**
13 **or negligence in the performance of design professional services is void**
14 **and unenforceable.**

15 **“(b) Any provision in a construction agreement that requires a de-**
16 **sign professional to indemnify another from and against claims for**
17 **damages of any kind, including payment of or reimbursement for an**
18 **indemnitee’s attorney fees and costs of defense, arising from, or al-**
19 **leged to arise from, professional negligence of a design professional**
20 **or negligence in the performance of design professional services, is**
21 **unenforceable except to the extent the design professional’s propor-**
22 **tionate negligence caused the indemnitee’s damages as determined by**
23 **trial, arbitration, alternative dispute resolution or as otherwise agreed**
24 **by the design professional in a settlement agreement.**

25 **“(c) Notwithstanding paragraph (a) of this subsection, a con-**
26 **struction agreement may require that a design professional may be**
27 **liable for or required to reimburse any portion of the attorney fees or**
28 **other costs reasonably incurred to defend claims against an**
29 **indemnitee that do not exceed the design professional’s proportionate**
30 **percentage of professional negligence, but only after the determination**

1 **of the design professional's proportionate percentage of professional**
2 **negligence by trial, arbitration, alternative dispute resolution or as**
3 **otherwise agreed by the design professional in a settlement agreement.**

4 *"[(3) As used in this section, 'construction agreement' means any written*
5 *agreement for the planning, design, construction, alteration, repair, improve-*
6 *ment or maintenance of any building, highway, road excavation or other*
7 *structure, project, development or improvement attached to real estate including*
8 *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*
11 *tenant whether or not any provision of the lease or rental agreement relates*
12 *to or involves planning, design, construction, alteration, repair, improvement*
13 *or maintenance as long as the predominant purpose of the lease or rental*
14 *agreement is not planning, design, construction, alteration, repair, improve-*
15 *ment or maintenance of real property; or*

16 *"(b) Any personal property lease or rental agreement.*

17 *"[(5)] (6) No provision of this section shall be construed to apply to a*
18 *'railroad' as defined in ORS 824.200.*

19 **"SECTION 2. The amendments to ORS 30.140 by section 1 of this**
20 **2021 Act apply to construction agreements entered into or renewed on**
21 **and after the effective date of this 2021 Act."**

22
