

# D R A F T

## SUMMARY

Digest: The Act says that public bodies may not have certain terms in some types of construction contracts. (Flesch Readability Score: 75.1).

Provides that a public body may not include certain provisions relating to payment of defense costs in a contract with a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services.

## A BILL FOR AN ACT

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

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)*] **sub-**  
7 **sections (2) and (3)** of this section, any provision in a construction agree-  
8 ment that requires a person or that person's surety or insurer to indemnify  
9 another against liability for [*damage arising out of death or bodily injury to*  
10 *persons or damage to property*] **damages** caused in whole or in part by the  
11 negligence of the indemnitee is void.

12 (2) This section does not affect any provision in a construction agreement  
13 that requires a person or that person's surety or insurer to indemnify an-  
14 other against liability for [*damage arising out of death or bodily injury to*  
15 *persons or damage to property to the extent that the death or bodily injury to*  
16 *persons or damage to property arises out of*] **damages to the extent that the**  
17 **damages are caused by** the fault of the indemnitor, or the fault of the  
18 indemnitor's agents, representatives or subcontractors.

1       **(3) A public body as defined in ORS 174.109, including a public body**  
2 **acting as part of an intergovernmental entity formed with another**  
3 **state or with a political subdivision of another state, may not include**  
4 **a requirement in a contract with a person or entity providing archi-**  
5 **tecture, landscape architecture, engineering, photogrammetric map-**  
6 **ping, transportation planning, land surveying services or related**  
7 **services, requiring that the person or entity pay for attorney fees, ex-**  
8 **pert or investigation expenses or other defense costs incurred by the**  
9 **public body or intergovernmental entity in defending against a claim**  
10 **for professional negligence and relating to the professional services**  
11 **provided by the person or entity providing architecture, landscape ar-**  
12 **chitecture, engineering, photogrammetric mapping, transportation**  
13 **planning, land surveying services or related services, except to the**  
14 **extent that the person or entity’s liability or fault is first determined**  
15 **by adjudication or alternative dispute resolution or otherwise resolved**  
16 **by settlement agreement, and not to exceed the proportionate fault**  
17 **of the person or entity. A contractual provision that violates this**  
18 **subsection is unenforceable.**

19       [(3)] (4) As used in this section, “construction agreement” means any  
20 written agreement for the planning, design, construction, alteration, repair,  
21 improvement or maintenance of any building, highway, road excavation or  
22 other structure, project, development or improvement attached to real estate  
23 including moving, demolition or tunneling in connection therewith.

24       [(4)] (5) This section does not apply to:

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

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

1        [(5)] (6) No provision of this section shall be construed to apply to a  
2 “railroad” as defined in ORS 824.200.

3        **SECTION 2. The amendments to ORS 30.140 by section 1 of this 2024**  
4 **Act apply to construction agreements entered into or renewed on or**  
5 **after the effective date of this 2024 Act.**

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