

SB 848 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Patricia Pascone, LPRO Analyst

Meeting Dates: 3/1

WHAT THE MEASURE DOES:

Limits obligation for a person providing personal services or related services to defend and indemnify another party to a construction agreement until the person's liability or fault has been determined in an adjudication, alternative dispute resolution, or voluntary resolution. Broadens applicability of existing indemnification limitations to any type of damages.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

"Personal services" include professional consulting services such as architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, and other services set out ORS 279C.100. "Related services" include landscaping, facilities planning, appraisal services, hazardous substance testing, project construction or management, and land use planning services, among other things. Governmental bodies, private builders, and contractors commonly have construction agreements that require subcontractors to defend and indemnify them in the event of a lawsuit or a claim that a person or property was damaged by the construction or the design of the construction. The party requiring another to indemnify it is the indemnitee. The party who has the obligation to indemnify is the indemnitor. Existing law specifies that a indemnitee may not require an indemnitor to defend and indemnify the indemnitee for the indemnitee's own fault; the duty only extends to those damages which arise from the of the indemnitor's fault or the indemnitor's subcontractor's fault.

Senate Bill 848 limits a professional's duty to defend and indemnify other parties to a construction agreement to the professional's proportionate fault after that fault has been determined in an adjudication or other resolution.