



February 22, 2023

Senate Committee on Judiciary
Oregon State Legislature
900 Court St. NE, Room 453
Salem, OR 97301

RE: City of Beaverton Opposes SB 848

Dear Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

The City of Beaverton appreciates the opportunity to express its opposition to SB 848, which fundamentally shifts the risk of liability for defending construction defect claims from the architect, engineer, photogrammetrist, transportation planner, or land surveyor (“design professional”) to the contracting agency. The bill makes it more challenging for cities to be made whole when a design professional does substandard work.

The City of Beaverton opposes SB 848 for three reasons:

First, the city should be able to contractually require a design professional to defend their work and indemnify the city if the city receives a claim based on a faulty design or low-quality work. The design professional is in the best position to defend the quality of their actions and design. Requiring the city to defend the claim until the design professional is found to be negligent by a court or arbitrator will place an increased financial burden on cities for these types of claims. Local government should not be required to spend taxpayer dollars to defend a claim for a design professional’s negligence.

Second, there is no reason to treat architects, engineers, and land surveyors differently from any other professional contractor, which this legislation would require. The city currently requires all vendors, contractors, and design professionals to indemnify and defend the city against claims alleged to arise from their negligence. For example, the city would use the indemnification provision in its construction contract if it received a claim against a contractor for faulty construction of a curb ramp that leads to a trip and fall injury. If the engineered design of the curb ramp also contributed to the injury, the design professional should have to defend their actions, not the city.

Third, design professionals already have some protection in the standard of care, which requires the design professional to exercise an ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances and conditions. The design professional should be able to enter into a contract that requires it to defend against allegations that this standard is not met. This should motivate the design professionals to do their best work for the city and its taxpayers.

Thank you for the opportunity to share our concerns with SB 848. We urge you not to move forward with this legislation for the reasons stated above.

Sincerely,

A handwritten signature in blue ink that reads "Bill Kirby". The signature is written in a cursive style with a stylized "B" and "K".

Bill Kirby
City Attorney