

## **SB 848 -1 STAFF MEASURE SUMMARY**

### **Senate Committee On Judiciary**

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**Meeting Dates:** 3/1, 3/29

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#### **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:**

- Duty to defend attorney fees and litigation costs distinguished from indemnification for damages
- Limitations on design professionals' insurance for defending another
- Design professionals' responsibility for own defense
- Examples of smaller firms that turned down work because of risk
- Non-negotiability of certain government contracts; some require promises when responding to the Request for Proposals
- Statute of limitations for claims against design professionals is two years, while it is six years for contractors on large projects

#### **EFFECT OF AMENDMENT:**

-1 Prohibits a public body from requiring a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services to pay up front for the public body's attorney fees, expert fees, investigation expenses or other costs of defending against a claim of professional negligence or relating to the person's or entity's services, until after the person's or entity's liability or fault is determined by adjudication, dispute resolution, or settlement agreement. Limits the person's or entity's liability for the public body's costs of defense to the proportionate fault of the person or entity. Makes contrary contractual provisions unenforceable until after the person's or entity's liability or fault has been determined. Removes applicability to indemnification obligations generally.

#### **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 prime 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 and the party who has the obligation to indemnify is the indemnitor. Existing law specifies that an 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 would limit 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.