

SB 1575 -1, -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 2/8, 2/14, 2/15

WHAT THE MEASURE DOES:

The measure limits a public body from including a duty to defend requirement in a construction agreement, when it is a contract between the public body and persons providing certain professional services, except to the amount of the professional's proportionate fault.

REVENUE: No revenue impact

FISCAL: May have fiscal impact, but no statement yet issued

Detailed Summary:

- Restricts a public body from contractually requiring a person or entity providing certain professional services to pay for the public body's attorney fees, expert fees, investigation expenses or other costs of defending against a claim involving the professional's services, except to the extent that the professional's liability or fault is first determined by adjudication, dispute resolution, or settlement agreement.
- Lists applicable professionals including a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services.
- Limits the professional's liability for the public body's costs of defense to the proportionate fault of the professional consultant.
- Makes contrary contractual provisions unenforceable until after the professional consultant's liability or fault has been determined.
- Replaces specific types of damages subject to indemnity with the general term "damages."
- Applies the limit to agreements entered into on or after the measure's effective date.

ISSUES DISCUSSED:

- Design professionals' insurance does not cover defense of another party
- Continued responsibility for own defense and
- Examples of smaller firms that turned down work because of risk
- Non-negotiability of certain government contracts

EFFECT OF AMENDMENT:

-1 Replaces the measure.

Detailed Summary

- Restricts a public body from including a duty to defend the public body in construction agreements with persons providing certain professional services, except to the extent that the professional's liability or fault is determined by adjudication, alternative dispute resolution, or settlement agreement.
- Limits the duty to defend to the proportionate fault of the professional.
- Lists applicable professionals, including a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services, as these are given the meaning in ORS 279C.100.
- Renders a provision unenforceable if it requires a greater duty to defend.
- Applies the limit to agreements entered into on or after the measure's effective date.

-2 Replaces the measure.

Detailed Summary

- Restricts a public body from including a duty to defend the public body in construction agreements with persons providing certain professional services, except to the extent that the professional's liability or fault is determined by adjudication, alternative dispute resolution, or settlement agreement.
- Limits the duty to defend to the proportionate fault of the professional.
- Lists applicable professionals, including a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services, as these are given the meaning in ORS 279C.100.
- Renders a provision unenforceable if it requires a greater duty to defend.
- Excludes design-builds.
- Applies the limit to agreements entered into or renewed on or after the measure's effective date (Jan. 1, 2025).
- Sunsets the changes on Jan. 1, 2035, reverting the statutes back to current text on that date.

BACKGROUND:

Governmental bodies commonly have construction agreements that require contractors and subcontractors to defend the government body in the event of a lawsuit or a claim that alleges a person or property was damaged by the construction or the design of the project. A contractual duty to defend may require payment for defense counsel and other costs of defending against a lawsuit. A person who has the duty to defend another may be required to pay up front for the defense costs of not only their own alleged fault, but also the alleged fault of the government body.