


From the desk of Representative Rob Nosse



To: Oregon House of Representatives
Re: Oregon SB1575-A on Eliminating the Contractual Duty to Defend
Date: March 7, 2024

The American Council of Engineering Companies (ACEC) is the national trade association for the advancement of the engineering industry. As the Voice of the Engineering Industry, ACEC has for years been working closely with ACEC state and regional Member Organizations throughout the country, including ACEC Oregon, in advocating for a more fair and insurable risk allocation between clients and design professionals through the passage of state laws rendering duty to defend provisions in contracts void and unenforceable.

More than twenty states currently have statutory protections against unfair duty to defend provisions. To the best of our knowledge, these laws have not had a negative impact on public agencies' financial solvency or their ability to deliver necessary projects to the public. In particular, we are not aware of any public agency or local government entity that has experienced financial difficulties because they were not able to impose an uninsured risk exposure on a design professional firm.

We would note that the duty to defend legislation for a number of states has been in effect for over a decade, with no known material adverse financial impact to public agencies or attempt to roll back the statutes.

Rather than being detrimental to an agency or local government, the duty to defend protections for design professional firms have proved beneficial by providing the opportunity for more firms of all sizes, including but not limited to small, minority, women-owned, and veteran-owned design professionals, to participate in public agency contracting. Firms can sign contracts with confidence that they will not have an uninsurable risk exposure in the form of a duty to defend before liability has been established.

We thank the Oregon House of Representatives for the opportunity to share our thoughts on this critical legislation.

Sincerely,

A handwritten signature in black ink that reads "Linda Bauer Darr". The signature is written in a cursive, flowing style.

Linda Bauer Darr
President & CEO