



To: Senate Committee on Judiciary

Re **Support for Senate Bill 1575**

I am House Counsel for RDH Building Science, Inc. ("RDH"). RDH provides building enclosure consulting services in Oregon through our office in Portland. I write today in support of Senate Bill 1575 ("SB 1575").

SB 1575 proposes common sense and fair modifications to ORS 30.140 regarding defense and indemnity obligations in construction agreements. First, SB 1575 would modify ORS 30.140(1) and (2) so that no party to a construction agreement can transfer by contract its liability for any damages it causes to another party. Currently ORS 30.140 only prohibits the transfer of liability that arises from personal injury or property damage. SB 1575 would extend the prohibition on transferring liability to include liability for economic loss, such as damages in the form of additional construction costs or costs resulting from project delay. This makes sense because each party to a construction agreement should be responsible for any damage it causes.

In addition, SB 1575 would modify ORS 30.140 to provide that construction agreements with a public body may not require that design professionals pay a public body's attorney's fees and other costs incurred defending claims that arise from the design professional's services, except in proportion to the design professional's actual liability. This makes sense because design professionals are better suited to defend claims arising from their own services. Design professionals and their insurers have the infrastructure, resources, experience, and expertise to defend such claims. Furthermore, professional liability insurance typically provides coverage for the insured design professional to defend itself (not others) from claims arising from its services. If a public body chooses to defend a claim that arises from a design professional's service, rather than have the design professional itself defend the claim, then the public body should bear the upfront cost of the defense that it has elected to provide.

RDH encounters overbroad defense and indemnity clauses on regular basis; clauses that would require RDH to assume responsibility for damages it did not cause, or to pay another party's upfront defense costs for claims that RDH is better able to defend itself. Fortunately, RDH is usually able to negotiate a fair defense and indemnity clause. Unfortunately, many design professionals in Oregon are presented with overbroad defense and indemnity clauses on a take it or leave it basis, and they do not have the bargaining power to negotiate fair terms. SB 1575 levels the playing field by requiring that each party to a construction agreement be responsible for the damages it causes, and by preventing government bodies from taking on the defense of claims at a design professional's expense.

I understand that some who oppose SB 1575 assert that it would allow design professionals to escape liability or responsibility for defending their work. That is just not true. Nothing in SB 1575 allows design professionals to escape liability for damage they cause, or for having to defend claims that arise from their services.

Thank you for the opportunity to comment on SB 1575.

RDH Building Science, Inc.

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