

Date:	February 7th 2024
To:	Chair Prozanski, Vice Chair Thatcher, Members of the Senate Judiciary Committee
From:	Association of Oregon Counties Legislative Affairs Manager Michael Burdick
Subject:	AOC opposes SB 1575

Thank you for the opportunity to submit testimony in opposition to SB 1575. For the record, I am Michael Burdick, providing testimony on behalf of the Association of Oregon Counties (AOC).

The Association of Oregon Counties (AOC) is a non-partisan member organization that advocates on issues that unite all county governing bodies and have an impact on county functions, governance, budgets, and services.

Counties are sympathetic to the concerns raised by proponents of SB 1575, and we share their goal of greater participation in public contracts by small businesses and firms owned by women and members of historically marginalized communities. However, SB 1575 places an unfair burden on taxpayers, and will create surprise budget impacts on local governments like counties, who may be forced to cut critical programs whenever one of our buildings is the subject of a lawsuit. As you know, most counties are already struggling to maintain basic services as the revenue sources we depend on continue to dwindle, as our costs continue to increase, and as our options for raising revenue continue to be severely constrained.

SB 1575 shifts private industry's risks and costs onto taxpayers, and that just isn't fair. If there's a lawsuit over a building built by a county, a design professional or a construction contractor may have been at fault for whatever damages are being claimed. It is hard to imagine a case where the county would be at fault, so it isn't fair for the county to ever be in a position of having to pay legal costs associated mounting a defense against any such lawsuits.

Another serious problem with SB 1575 is that it would create perverse incentives that would dramatically increase the legal costs associated with these lawsuits, and as a practical matter, design professionals who are actually at fault for damages may frequently be able to escape accountability for their mistakes. In order for an at-fault

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design professional to ever be on the hook for damages they cause, lawsuits would have to progress all the way to trial, and fault would have to be fully adjudicated. Under the status quo, these lawsuits are typically resolved through a settlement long before fault is adjudicated, because the design professionals have an incentive to limit the cost of the legal defense and limit their exposure to risk.

The design professionals who are advocating for SB 1575 assert that what's problematic about these "duty to defend" contracting provisions is that insurance isn't available to cover design professionals and they can't assume the risk. If that's true, a more equitable way to solve that problem would be for the state to create some kind of insurance pool to sell insurance coverage to the design professionals. Such coverage could be offered to design professionals working on public and private projects alike and could therefore address the problems being raised in a much more robust way. A solution like that would allow the design professionals to cover their own costs and risks related to doing business rather than forcing taxpayers to do so.

We respectfully request the committee reject SB 1575 and consider alternative options for addressing these issues instead.

Thank you for considering AOC's testimony.