



February 29, 2024

House Committee on Rules
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

Thank you for the opportunity to provide this letter in opposition to SB 1575 A. We are concerned that SB 1575 A will unfairly allocate risk to the taxpayer from negligent design work and single out the design industry for preferential treatment that other contractors would not enjoy.

When a local government undertakes a construction project, we routinely require design professionals and other contractors to not only indemnify, but also defend against third-party claims relative to the project. We do this for two main reasons: first, because damage or injury to a third party may be due to faulty design or construction (or a combination of the two) and second, to prevent taxpayers from bearing legal costs associated with negligent design and/or construction. SB 1575 A unfairly burdens taxpayers with the risk associated with professional design work that the taxpayers do not control.

Current law already proportionally limits a design consultant's liability in the context of being an indemnitor in a public contract. If a third party's injury on a public project was ultimately determined to be caused by bad design, the design consultant would only be obligated to indemnify the public owner up to the percentage of its negligence. In our view it is fair that all contractors – not taxpayers – incur the cost of defending such claims, in an effort to sort out what, if any, liability exists related to one or more contractors.

The duty to defend should rest on the shoulders of the party or firm providing the service because the liability could only arise as a result of their services. As a result, the duty to defend ought to be treated as the cost of doing business on public projects. We are confident that design consultants build liability costs into the rates paid by public owners when they are hired for design work on public projects, yet we don't anticipate that passage of this legislation will result in lower rates for design services. What's more, design consultants have already successfully advocated for public contracting laws that only allow the most qualified design consultants to be selected for work on public projects (see ORS 279C.110). It follows that if only the most highly qualified firms are performing this work, the risk of third-party liability would be quite low. Therefore, we think it is fair that design consultants stand by their work and not shift their business risk to taxpayers.

We encourage the Legislature to reject SB 1575 A.