



Testimony to the

House Committee on Rules in Support of SB 1575

February 29, 2024

Chairman Fahey, Vice Chairs Helfrich and Kropf, and members of the House Committee on Rules, for the record, my name is Mark Jacobsen. I am House Counsel for RDH Building Science Inc. ("RDH"). RDH provides professional services, including engineering and architecture, related to building enclosure design and construction. RDH has been in business in Oregon since 2004, serving public and private clients. I am writing today in support of Senate Bill 1575 A.

I have reviewed many of the submissions to the committee in opposition to Senate Bill 1575 A. There is a common theme; that Senate Bill 1575 A would allow a design professional to avoid responsibility for defending claims on public projects that arise from the design professional's defective services. That assertion is simply not accurate. If a public body believes that a claim on a public project is the result of the negligence or defective services of a design professional, then the public body need only make that claim against the design professional to trigger a defense of the claim by the design professional and its insurer(s). Senate Bill 1575 A does not release design professionals from liability, nor does it shield design professionals from having to defend claims arising from their services.

Instead, Senate Bill 1575 A simply clarifies that a public body cannot require by contract that: 1) a design professional must pay for the public body itself (instead of the design professional) to defend claims that a design professional's services were defective, and 2) if a design professional's services are implicated in a claim, then the design professional must pay all of the public body's defense costs, even if the public body or third parties turn out to have been responsible for the claim.

In my experience, in private contracts, design professionals are often able to negotiate appropriate and fair defense and indemnity obligations. However, public bodies are typically intransigent. They simply demand that design professionals take on overbroad, uninsurable, and unfair duties to defend and indemnify. There is usually no opportunity to negotiate, even to simply clarify these clauses in public contracts. Accordingly, SB 1575 A is appropriate and necessary legislation.

Thank you for the opportunity to comment in support of SB 1575 A.

Sincerely,

Mark Jacobsen
House Counsel
RDH Building Science Inc.

Direct: 971.256.9640
[mjacobson@rdh.com](mailto:mjacobsen@rdh.com)