



WASHINGTON COUNTY OREGON

February 28, 2023

Chair, Julie Fahey
Vice-Chairs Helfrich and Kropf
Members of the House Committee on Rules

Dear House Committee on Rules,

I am writing to express our strong opposition to Senate Bill 1575A, which would unfairly provide the design industry with special protections and allocate negligent design liability to Oregon taxpayers and local governments.

As you know, Washington County is the second largest county in the state of Oregon by population, with over 600,000 people residing within the County. Since 1990, the county's population has nearly doubled in size, most recently our population has grown at a rate equivalent to 19 people moving in every day. This growth has made us one of the most rapidly growing and most diverse counties in the state. To keep up with that growth and provide services and spaces to our community, we build public projects from roads, to shelters, to civic centers.

When we undertake a construction project, we require design professionals and other contractors to indemnify and defend against claims relative to their work on a project. We do this in order to protect taxpayers from bearing legal costs connected to negligent design and because damage or injury to a third party may be due to failures in design or construction. Removing public contracting agencies', such as Washington County, ability to require a duty to defend in our contracts could double litigation costs for any public agency.

It's simply common sense that any liability stemming from a project should be addressed by those providing the service and they should be the parties responsible for the cost of defending claims against their design and construction. Our duty to defend requirements reflect that. In cases where we are subject to litigation because of alleged defaults in a project, everyone who may share a portion of the liability should be at the table to stand by their portion of the work. If a contractor's work is not part of the cause for damages, then they can show that; if it is, then damages can be properly divided based on a single court action.

Without this potential process, it requires a public contracting body to litigate on behalf of this subset of contractors and then pursue a second case to re-assign damages to the service providers. That two-step litigation process negatively impacts the counties' ability to settle lawsuits relating to construction projects. And, it does not limit the contractor's liability, it just means that the County would be required to pay experts and lawyers for two legal cases – essentially doubling our litigation costs. Additionally, this process usually takes more than a year in Oregon, placing a significant burden on the claimant and increasing cost for everyone involved in the construction of the project.

Senate Bill 1575A would also result in a system that forces counties to mitigate potential liability by awarding design contracts to those who have a history of qualifications, further stacking the deck against women, minority, and new business owners. These types of contracts are allocated using qualifications-based selection processes, which allows the County to place weight on a providers' work history. In Washington County, we are working to grow the pool of qualified providers and extend opportunities to historically disadvantaged businesses. But, we in turn manage our liabilities by requiring these professionals to defend their work. If we cannot mitigate the risk to the public dollars through indemnification, we will have to look to work history on public projects as another means of mitigating our risk. This could have the perverse incentive of favoring the use the same service providers repeatedly instead of expanding opportunities to those with less history of work but similar credentials.

Of additional concern, Senate Bill 1575A provides special benefits to insurance companies who underwrite design professionals, further increasing costs to taxpayers and the contracting community.

We strongly encourage you to vote “No” on Senate Bill 1575A to protect local taxpayers from this risk.

Thank you for your consideration,

Carly Sylva-Gabrielson

Carly Sylva-Gabrielson
Government Relations Manager
Washington County