



Chair Julie Fahey
House Committee on Rules
900 Court St. NE
Salem, OR 97301
Submitted electronically

February 29, 2024

Dear Chair Fahey and Members of the House Committee on Rules:

Clackamas County strongly opposes SB 1575, and we request you do not schedule it for a work session or otherwise vote it down.

We opposed this concept in 2023 when it was SB 858, and we opposed it the first week of the 2024 session. This bill would increase risk and legal exposure to public agencies, making public projects more expensive. When public agencies lose, taxpayers lose.

The duty to defend professional work should rest on the professionals who know best what might have occurred. Shifting the burden to public agencies will require dipping into risk funds, hiring outside experts, and potentially taking legal action against design firms that would otherwise be in partnership with public agencies.

The inclusion of a duty to defend clause in public contracts also incentivizes design consultants to cooperate with the county and negotiate an amicable resolution to issues related to their work before a dispute goes to trial. SB 1575, if successful, would remove this incentive. In fact, it would have the opposite effect—disincentivizing design professions from participation earlier in the dispute process because their responsibility would not arise until after adjudication.

ORS 279C.110 is an example of good policy that should inform the decision on SB 1575. It states that only the most qualified design consultants be hired to deliver public projects. It stands to reason that if only the most qualified bidders are allowed to enter into public contracts, that they, too, are the most qualified to defend their work if it fails.

We can appreciate the intent of SB 1575 to try and improve access for small firms to compete for public contracts. However, we question whether this bill—which is limited only to public contracts that already require the most qualified design professionals be selected—will move the needle to solve the issue of rising costs of insurance. We encourage the Legislature to

instead focus on minimum insurance requirements so private firms may be covered for a duty to defend obligation, rather than asking taxpayers to assume the costs.

We urge your “no” vote on SB 1575. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Tootie Smith". The signature is written in a cursive, flowing style.

Tootie Smith, Chair
On Behalf of the Clackamas County Board of Commissioners