

SB 213 -2, -3, -5 STAFF MEASURE SUMMARY

**Senate Committee On Judiciary and Ballot Measure 110
Implementation**

Prepared By: Channa Newell, Counsel

Meeting Dates: 3/22, 4/13

WHAT THE MEASURE DOES:

Makes void and unenforceable provisions of construction contract agreement requiring a design professional to defend or indemnify another against claims or damages for negligence in performance of design professional services or by any person or entity for whom the design professional is responsible. Allows design professional to be held liable for proportion of negligence as determined by trial, arbitration, alternative dispute resolution, or as otherwise agreed to by the parties.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Voids provisions of construction agreement that require design professional to defend another for claims of negligence arising from design professional services. Makes unenforceable provisions of construction agreement that require a design professional to indemnify another from claims for damages, including attorney fees, arising from professional negligence of the design professional or in the performance of design services, except to the extent of proportionate negligence.

-3 Limits prohibition to construction agreements that are partially or entirely funded by public funds. Clarifies that indemnification and duty to defend can occur after proportion of liability is determined.

-5 Replaces measure. Makes provisions of construction agreement for projects that are funded in whole or part by public funds that require a design professional to defend or indemnify another against claims or damages arising from the negligence of the design professional void and unenforceable until proportional negligence of design professional is determined. Requires design professional to reimburse indemnitee for defense cost up to amount of portion of design professional's negligence. Defines construction agreement and design professional.

BACKGROUND:

Parties to a construction contract may bargain for certain provisions within the contract. Oregon Revised Statute 30.140 voids contract provisions in construction agreements that require a party (the indemnitor) to indemnify, or pay for losses or damages, claims arising in whole or in part from the negligence of the indemnitee. Contracts may require one party (the indemnitor) to indemnify another for damages arising from the negligence of the indemnitor or its subcontractors or agents. For example, a contractor may ask a supplier to be responsible for damages the contractor incurs as a result of the supplier's negligence, but it may not ask the supplier to pay for damages resulting from the contractor's negligence.

Senate Bill 213 voids provisions of a construction contract agreement that require a design professional to defend or indemnify another against claims or damages arising from negligence in design services, except to the extent the design professional's proportionate negligence caused the indemnitee's damage as determined at trial or arbitration.