

SB 213-5
(LC 2530)
4/7/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of American Council of Engineering Companies-Oregon)

**PROPOSED AMENDMENTS TO
SENATE BILL 213**

1 On page 1 of the printed bill, delete lines 4 through 28 and delete page
2 2 and insert:

3 **“SECTION 1. ORS 30.140 is amended to read:**

4 **“30.140. (1) As used in this section:**

5 **“(a) ‘Construction agreement’ means any written agreement for the**
6 **planning, design, construction, alteration, repair, improvement or**
7 **maintenance of any building, highway, road excavation or other**
8 **structure, project, development or improvement attached to real es-**
9 **tate including moving, demolition or tunneling in connection there-**
10 **with.**

11 **“(b) ‘Design professional’ means:**

12 **“(A) A person or firm registered to practice architecture under ORS**
13 **671.010 to 671.220;**

14 **“(B) A person registered to practice landscape architecture under**
15 **ORS 671.310 to 671.459;**

16 **“(C) A person registered to practice engineering, land surveying or**
17 **photogrammetric mapping under ORS 672.002 to 672.325; or**

18 **“(D) A person or firm providing services identified in ORS 279C.100.**

19 **“[(1)] (2) Except to the extent provided under subsection [(2)] (3) of this**
20 **section, any provision in a construction agreement that requires a person or**
21 **that person’s surety or insurer to indemnify another against liability for**

1 damage arising out of death or bodily injury to persons or damage to prop-
2 erty caused in whole or in part by the negligence of the indemnitee is void.

3 **“(2) (3) Except as provided in subsection (4) of this section, this**
4 **section does not affect any provision in a construction agreement that re-**
5 **quires a person or that person’s surety or insurer to indemnify another**
6 **against liability for damage arising out of death or bodily injury to persons**
7 **or damage to property to the extent that the death or bodily injury to per-**
8 **sons or damage to property arises out of the fault of the indemnitor, or the**
9 **fault of the indemnitor’s agents, representatives or subcontractors.**

10 **“(4)(a) Except as provided in paragraph (c) of this subsection, any**
11 **provision in a construction agreement for a project that is partially**
12 **or entirely funded by public funds that requires a design professional**
13 **to defend another against claims or damages arising from, or alleged**
14 **to arise from, negligence of a design professional or negligence in the**
15 **performance of design professional services is void and unenforceable.**

16 **“(b) Any provision in a construction agreement for a project that**
17 **is partially or entirely funded by public funds that requires a design**
18 **professional to indemnify another from and against claims for dam-**
19 **ages of any kind, including payment of or reimbursement for an**
20 **indemnitee’s attorney fees and costs of defense, arising from, or al-**
21 **leged to arise from, professional negligence of a design professional**
22 **or negligence in the performance of design professional services, is**
23 **unenforceable except to the extent the design professional’s propor-**
24 **tionate negligence caused the indemnitee’s damages as determined by**
25 **trial, arbitration, alternative dispute resolution or as otherwise agreed**
26 **by the design professional in a settlement agreement.**

27 **“(c) A construction agreement for a project that is partially or en-**
28 **tirely funded by public funds may require that a design professional**
29 **reimburse any portion of the attorney fees or other costs reasonably**
30 **incurred by an indemnitee to defend claims against the indemnitee**

1 that does not exceed an amount in proportion to the design
2 professional's actual liability for the claims against the indemnitee
3 based on the design professional's proportionate percentage of profes-
4 sional negligence, but only after the determination of the design
5 professional's proportionate percentage of professional negligence by
6 trial, arbitration, alternative dispute resolution or as otherwise agreed
7 by the design professional in a settlement agreement.

8 “[3] As used in this section, ‘construction agreement’ means any written
9 agreement for the planning, design, construction, alteration, repair, improve-
10 ment or maintenance of any building, highway, road excavation or other
11 structure, project, development or improvement attached to real estate including
12 moving, demolition or tunneling in connection therewith.]

13 “[4] (5) This section does not apply to:

14 “(a) Any real property lease or rental agreement between a landlord and
15 tenant whether or not any provision of the lease or rental agreement relates
16 to or involves planning, design, construction, alteration, repair, improvement
17 or maintenance as long as the predominant purpose of the lease or rental
18 agreement is not planning, design, construction, alteration, repair, improve-
19 ment or maintenance of real property; or

20 “(b) Any personal property lease or rental agreement.

21 “[5] (6) No provision of this section shall be construed to apply to a
22 ‘railroad’ as defined in ORS 824.200.

23 **“SECTION 2. The amendments to ORS 30.140 by section 1 of this**
24 **2021 Act apply to construction agreements entered into or renewed on**
25 **and after the effective date of this 2021 Act.”.**

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