

**FISCAL IMPACT OF PROPOSED LEGISLATION****Measure: SB 848 - A <CORRECTED>**

82nd Oregon Legislative Assembly – 2023 Regular Session

Legislative Fiscal Office

*Only Impacts on Original or Engrossed Versions are Considered Official*

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**Measure Description:**

Extends provision relating to indemnification provisions in construction agreements to all types of damages.

**Government Unit(s) Affected:**

Construction Contractors Board, Department of Consumer and Business Services, Department of Administrative Services, District Attorneys, Judicial Department, Oregon Military Department, Department of Justice, Statewide, Special Districts Association of Oregon, Counties, Cities, School Districts

**Summary of Fiscal Impact:**

Costs related to the measure are indeterminate at this time - See explanatory analysis.

**Analysis:****<Corrected based on additional information submitted by agencies.>**

SB 848 - A states that a public body may not include a requirement in a contract with a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services, or related services, which requires the person or entity to pay for attorney fees, expert or investigation expenses, or other defense costs incurred by the public body or intergovernmental entity in defending against a claim for professional negligence, until after the person or entity's liability or fault is determined by adjudication, alternative dispute resolution, or otherwise resolved by settlement agreement. Such a contractual provision is unenforceable until after the person or entity's liability or fault is determined. Indemnification provisions in construction agreements are also extended to all types of damages. The measure takes effect January 1, 2024.

While there is no or minimal fiscal impact for most state agencies, some agencies with substantial contract work relating to the professional services covered by this measure could have a fiscal impact. Agencies will need to pay up front for legal costs, and then wait for reimbursement until fault is determined and payments are made. This could increase the cost of public works projects for some state agencies, as well as Special Districts and Counties. No response was received from League of Oregon Cities or School Districts.

The Department of Administrative Services (DAS) Risk Management division provides risk management services for state agencies, and would be responsible for defense costs until fault is determined. If the state is found at fault, DAS would pay the portion the state is determined to be at fault for, and then would need to recover damages which could lead to additional costs; DAS would only be able to recoup the proportionate costs from the person or entity found to be liable. DAS notes that while this is not a frequent event, if such a case were to come up, the agency estimates the impact at around \$500,000 per year with a potential for a severity at \$1 million. Defense costs come out of the nonlimited Insurance Fund, and any additional costs for the fund resulting from this measure would be passed on to state agencies in future biennia.

The Department of Justice states that the agency can absorb any additional demand for legal services using existing resources.

This measure warrants a subsequent referral to the Joint Committee on Ways and Means for further consideration of the fiscal impact.