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# PROFESSIONAL LAND SURVEYORS SUPPORT SENATE BILL 848

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Chair Prozanski and Members of the Committee:

The Professional Land Surveyors of Oregon (PLSO) is a professional association representing the interests of licensed Professional Land Surveyors in Oregon. Surveyors are licensed and regulated by the Oregon State Board of Examiners for Engineering & Land Surveying (OSBEELS). Professional Land Surveyors provide a wide range of services which includes location of property boundaries, land use planning, topographic design surveys, construction layout services and more. PLSO has approximately 600 members across the state, including both public and private sector professional surveyors. PLSO is affiliated with the National Society of Professional Surveyors (NSPS), which represents surveyors nationally.

PLSO is a partner in the coalition of design professionals who have drafted and who support Senate Bill 848.

While the issues surrounding design and construction liability are complex, I've used the following hypothetical to explain concerns about contracts mandating land surveyors agree to duty to defend provisions in contracts:

Imagine you're selected to provide the construction layout for a subdivision. As an emerging small business, you are excited to do this visible and prominent project. It will be the largest contract you've earned. You sign the contract provided by the primary contractor, and it includes a duty to defend clause.

You complete your work without incident or error. Some time later, a different subcontractor begins pouring the concrete footings for the houses. The general contractor stops paying the concrete subcontractor alleging subpar work. The concrete subcontractor sues the general contractor.

At this point, the general contractor, using the duty to defend provision, could require you -- the land surveyor -- to assist with paying the cost of the general contractor's legal defense against the suit brought by the concrete subcontractor, which is totally unrelated to survey work. Once settled and determined that you had no liability in the dispute between the general contractor and the concrete subcontractor, you might not even get your "contribution" to the legal defense fund reimbursed.

And, if there is anything on which everyone does seem to generally agree, it is that no insurance product currently exists in the marketplace for design professionals which will pay for a legal defense claim arising solely from a duty to defend obligation, thus forcing design professionals to pay out of pocket whenever a duty to defend provision is enforced. Such a claim could easily put a firm out of business and the potential cash flow liability is so worrisome that it does impact the size and scope of projects that small and emerging design professional firms will even consider.

Land surveyors (and other design professionals) do have professional liability insurance. They will defend themselves against claims of professional liability from start to finish. Senate Bill 848 does not absolve design professionals from legal claims of defective work. However, it does protect them from being forced to pay legal bills on claims against others inarguably unrelated to the design professional's work.

Thank you for considering this important legislation.