



March 1, 2023

Clackamas County Board of Commissioners
Policy Position
Relating to Public Liability with Design Professionals

Clackamas County opposes SB 848: Increased costs to deliver public construction projects hinder local governments' ability to serve the public in a meaningful and fiscally sound manner. The proposed legislation will increase costs to the public and unfairly favor architects, engineers, and land surveyors by legislating away standard contractual remedies.

The County opposes SB 848 for three reasons:

1. The County should be able to contractually require an architect, engineer, or land surveyor ("design professional") to defend their work and indemnify the County if the County receives a claim based on a faulty design or low-quality work. The design professional is in the best position to defend the quality of their actions and design. Requiring the County to defend the claim until the design professional is found to be negligent by a court or arbitrator will place an increased financial burden on public agencies for these types of claims. Counties should not be required to spend taxpayer dollars to defend a claim for a design professional's negligence.
2. There is no reason to treat design professionals differently from any other contractor, which this legislation would require. The proposed legislation gives special treatment to design professionals by essentially removing the ability to require those professions to defend a claim for their own negligence. The County requires vendors, contractors, and design professionals to indemnify and defend the County against claims alleged to arise from their negligence. If design professionals do not want to agree to a duty to defend, that should be addressed through contract negotiations, not through legislation.
3. Design professionals already have significant protection in the standard of care, which requires the design professional to exercise an ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances and conditions. It is reasonable to expect a design professional to enter into a contract that requires it to defend against allegations that this standard is not met. This should motivate the design professionals to do their best work for the County and its taxpayers.

We urge a "no" vote on SB 848.

Please contact Chris Lyons at clyons@clackamas.us for more information.