

SB 1575 A STAFF MEASURE SUMMARY

House Committee On Rules

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Meeting Dates: 2/29, 3/6

WHAT THE MEASURE DOES:

The measure limits a public body from including a duty to defend requirement in a construction agreement with persons providing certain professional services, except to the amount of the person's proportionate fault.

REVENUE: No revenue impact

FISCAL: Has an indeterminate fiscal impact

SENATE VOTE: Ayes 24; Nays 6

Detailed Summary:

- Restricts a public body from including a duty to defend the public body in construction agreements with persons providing certain professional services, except to the extent that the professional's liability or fault is determined by adjudication, alternative dispute resolution, or settlement agreement.
- Lists applicable professionals, including a person or entity providing architecture, landscape architecture, engineering, photogrammetric mapping, transportation planning, land surveying services or related services, as these are defined in ORS 279C.100.
- Renders a contract provision unenforceable if it requires a greater duty to defend.
- Excludes design-builds.
- Applies the limit to agreements entered into or renewed on or after the measure's effective date.
- Sunsets the changes on Jan. 1, 2035.

ISSUES DISCUSSED:

- Non-negotiability of most government contracts
- Limitations of insurance coverage for design professionals
- Special nonprofit insurance pools
- Who should bear risk
- States that limit duty to defend clauses

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

A defendant to a lawsuit is responsible for the costs of defending itself, absent a contractual agreement otherwise. Governmental bodies commonly have construction agreements that require contractors and subcontractors to defend the government body in the event of a lawsuit or a claim that alleges a person or property was damaged by the construction or the design of the project. A contractual duty to defend may require payment for defense counsel and other costs of defending against a lawsuit. A person who has the duty to defend another may be required to pay up front for the defense costs of not only their own alleged fault, but also the alleged fault of the government body.

Persons who provide architecture, engineering, and other design services for construction projects are commonly called design professionals. Several states have laws limiting contractual provisions that require a design

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professional to defend the contracting body beyond the fault of the design professional. States with such laws include, but are not limited to: [Alabama](#) (Ala. Code Sect. 41-9A-3), [Arizona](#) (Ariz. Rev. Stat. Ann. 34-226), [California](#) (Cal. Civ. Code 2782.8), [Colorado](#) (Colo. Rev. Stat. 13-50.5-102(8)), [Florida](#) (Fla. Stat. 725.08), [Georgia](#) (Ga. Code Ann. 13-8-2), [Indiana](#) (Ind. Code 26-2-5), [Michigan](#) (Mich Comp. Laws 691.991), [New Mexico](#) (N.M. Stat. Ann. 56-7-1), [North Carolina](#) (N.C. Gen. Stat. 22B-1), [Ohio](#) (Ohio Rev. Code Ann. 153.81), [Utah](#) (Utah Code Ann. 63G-6a-1203), and [Washington](#) (Wash. Rev. Code 4.24.115).