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Bill Title: Relating to construction agreements.

Government Unit(s) Affected: Department of Administrative Services, Oregon Youth Authority, Legislative Administration, Judicial Department, Department of State Lands, Department of Transportation, Water Resources Department, 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.

Measure Description

This measure prohibits public bodies from including in a contract with a person or entity providing architecture, engineering, photogrammetric mapping, transportation planning, or land surveying services, a requirement for attorney fees, expert or investigation expenses or other defense costs related to claims for professional negligence. The measure provides for specified exceptions. The measure defines a construction agreement as any written agreement for the planning, design, construction, alteration, repair, improvement, or maintenance of any building, highway, road excavation, or other structure, project, development, or improvement attached to real estate, including moving, demolition, or tunneling.

These requirements apply to construction agreements and contracts entered into or renewed between January 1, 2025, and December 31, 2034. Starting January 1, 2035, the requirements discussed above are repealed, except for the revised definition of "construction agreement."

Fiscal Analysis

The total fiscal impact of this measure is indeterminate due to uncertainty about the number of legal proceedings and potential defense costs for state agencies and local governments. While there is no or minimal fiscal impact for most state agencies, some agencies with substantial contracts related to services covered by this measure may need to pay upfront for legal costs, and then wait for reimbursement until fault is determined and payments are made. Estimates of possible costs are outlined below.

State agencies

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 arise, the agency estimates the impact at around \$500,000 per year with a potential for 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.

Local government

Defense costs for cities and counties when there is a third-party claim related to a design professional's work are estimated to be between \$300,000 and \$350,000 per claim. In these cases, cities and counties would be required to pay the costs of each case that goes to trial, and then could recoup costs from the design professional if the design professional is found to have been negligent. It is unknown how many cases there would be, though counties estimate that there could be between one and three annually.

There could also be secondary costs related to updates to contract materials and practices, and possible increases in insurance premiums if defense costs fall to the city's insurer.

Relevant Dates

The measure takes effect on January 1, 2025.

The measure's requirements are repealed on January 1, 2035.