

SB 1575 A STAFF MEASURE SUMMARY

Carrier: Sen. Thatcher

Senate Committee On Judiciary

Action Date: 02/15/24

Action: Do pass with amendments. (Printed A-Eng.)

Vote: 5-0-0-0

Yeas: 5 - Gelser Blouin, Linthicum, Manning Jr, Prozanski, Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

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Meeting Dates: 2/8, 2/14, 2/15

WHAT THE MEASURE DOES:

The measure limits a public body from including a duty to defend requirement in a construction agreement, when it is a contract between the public body and persons providing certain professional services, except to the amount of the professional's proportionate fault.

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.
- Limits the duty to defend to the proportionate fault of the professional.
- 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 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:

Design professionals' insurance does not cover defense of another party

- Responsibility for own defense costs
- Firms that turned down work because of risk
- Non-negotiability of certain government contracts

EFFECT OF AMENDMENT:

The amendment excludes design-builds. It applies the measure to agreements entered into or renewed on or after the measure's effective date. Sunsets the measure's provisions on Jan. 1, 2035.

BACKGROUND:

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.