

Enrolled Senate Bill 1575

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CHAPTER

AN ACT

Relating to construction agreements; creating new provisions; and amending ORS 30.140.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 30.140 is amended to read:

30.140. (1) **As used in this section:**

(a) **“Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services” has the meaning given that term in ORS 279C.100.**

(b) **“Construction agreement” means 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 in connection therewith.**

(c) **“Related services” has the meaning given that term in ORS 279C.100.**

~~[(1)]~~ (2) Except to the extent provided under ~~[subsection (2)]~~ **subsections (3) and (4)** of this section, any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee is void.

~~[(2)]~~ (3) This section does not affect any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the fault of the indemnitor’s agents, representatives or subcontractors.

(4) **A public body as defined in ORS 174.109, including a public body acting as part of an intergovernmental entity formed with another state or with a political subdivision of another state, may not require in a contract with a person or entity providing architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services a duty to defend the public body or intergovernmental entity against a claim for professional negligence and relating to the professional services provided by the person or entity providing architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services, except to the extent that the person’s or entity’s liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate**

fault of the person or entity. A contractual provision that violates this subsection is unenforceable.

[(3) As used in this section, “construction agreement” means 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 in connection therewith.]

[(4)] (5) This section does not apply to:

(a) Any real property lease or rental agreement between a landlord and tenant whether or not any provision of the lease or rental agreement relates to or involves planning, design, construction, alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or rental agreement is not planning, design, construction, alteration, repair, improvement or maintenance of real property; *[or]*

(b) Any personal property lease or rental agreement; **or**

(c) Any design-build contract.

[(5)] (6) No provision of this section shall be construed to apply to a “railroad” as defined in ORS 824.200.

SECTION 2. ORS 30.140, as amended by section 1 of this 2024 Act, is amended to read:

30.140. (1) As used in this section[.], “construction agreement” means 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 in connection therewith.

[(a) “Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services” has the meaning given that term in ORS 279C.100.]

[(b) “Construction agreement” means 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 in connection therewith.]

[(c) “Related services” has the meaning given that term in ORS 279C.100.]

(2) Except to the extent provided under *[subsections (3) and (4)]* **subsection (3)** of this section, any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee is void.

(3) This section does not affect any provision in a construction agreement that requires a person or that person’s surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the fault of the indemnitor’s agents, representatives or subcontractors.

[(4) A public body as defined in ORS 174.109, including a public body acting as part of an intergovernmental entity formed with another state or with a political subdivision of another state, may not require in a contract with a person or entity providing architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services a duty to defend the public body or intergovernmental entity against a claim for professional negligence and relating to the professional services provided by the person or entity providing architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services, except to the extent that the person’s or entity’s liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate fault of the person or entity. A contractual provision that violates this subsection is unenforceable.]

[(5)] (4) This section does not apply to:

(a) Any real property lease or rental agreement between a landlord and tenant whether or not any provision of the lease or rental agreement relates to or involves planning, design, construction, alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or

rental agreement is not planning, design, construction, alteration, repair, improvement or maintenance of real property; **or**

(b) Any personal property lease or rental agreement[; *or*]

[*(c) Any design-build contract*].

[(6)] (5) No provision of this section shall be construed to apply to a "railroad" as defined in ORS 824.200.

SECTION 3. (1) The amendments to ORS 30.140 by section 2 of this 2024 Act become operative on January 1, 2035, and apply to construction agreements and contracts entered into or renewed on or after January 1, 2035.

(2) The amendments to ORS 30.140 by section 1 of this 2024 Act apply to construction agreements and contracts entered into or renewed on or after January 1, 2025, and on or before December 31, 2034.

Passed by Senate February 26, 2024

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Obadiah Rutledge, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House March 7, 2024

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2024

Approved:

.....M,....., 2024

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2024

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LaVonne Griffin-Valade, Secretary of State