

A-Engrossed
Senate Bill 1575

Ordered by the Senate February 21
Including Senate Amendments dated February 21

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Senator Floyd Prozanski)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act says that public bodies may not have certain terms in some types of construction contracts. (Flesch Readability Score: 75.1).

[Provides that a public body may not include certain provisions relating to payment of defense costs] **Limits a public body's ability to require a duty to defend the public body** in a contract with a person or entity providing *[architecture, landscape architecture,]* **architectural**, engineering, photogrammetric mapping, transportation planning, land surveying services or related services.

Provides that certain provisions relating to construction agreements do not apply to design-build contracts.

Sunsets provisions on January 1, 2035.

A BILL FOR AN ACT

1
2 Relating to construction agreements; creating new provisions; and amending ORS 30.140.

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

4 **SECTION 1.** ORS 30.140 is amended to read:

5 30.140. (1) **As used in this section:**

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

8 (b) **"Construction agreement"** means any written agreement for the planning, design,
9 **construction, alteration, repair, improvement or maintenance of any building, highway, road**
10 **excavation or other structure, project, development or improvement attached to real estate**
11 **including moving, demolition or tunneling in connection therewith.**

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

13 *[(1)]* (2) Except to the extent provided under *[subsection (2)]* **subsections (3) and (4)** of this
14 section, any provision in a construction agreement that requires a person or that person's surety
15 or insurer to indemnify another against liability for damage arising out of death or bodily injury to
16 persons or damage to property caused in whole or in part by the negligence of the indemnitee is
17 void.

18 *[(2)]* (3) This section does not affect any provision in a construction agreement that requires a
19 person or that person's surety or insurer to indemnify another against liability for damage arising
20 out of death or bodily injury to persons or damage to property to the extent that the death or bodily
21 injury to persons or damage to property arises out of the fault of the indemnitor, or the fault of the
22 indemnitor's agents, representatives or subcontractors.

23 (4) **A public body as defined in ORS 174.109, including a public body acting as part of an**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **intergovernmental entity formed with another state or with a political subdivision of another**
2 **state, may not require in a contract with a person or entity providing architectural, engi-**
3 **neering, photogrammetric mapping, transportation planning or land surveying services or**
4 **related services a duty to defend the public body or intergovernmental entity against a claim**
5 **for professional negligence and relating to the professional services provided by the person**
6 **or entity providing architectural, engineering, photogrammetric mapping, transportation**
7 **planning or land surveying services or related services, except to the extent that the**
8 **person’s or entity’s liability or fault is determined by adjudication or alternative dispute re-**
9 **solution or otherwise resolved by settlement agreement, and not to exceed the proportionate**
10 **fault of the person or entity. A contractual provision that violates this subsection is**
11 **unenforceable.**

12 *[(3) As used in this section, “construction agreement” means any written agreement for the plan-*
13 *ning, design, construction, alteration, repair, improvement or maintenance of any building, highway,*
14 *road excavation or other structure, project, development or improvement attached to real estate includ-*
15 *ing moving, demolition or tunneling in connection therewith.]*

16 *[(4)] (5) This section does not apply to:*

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

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

23 **(c) Any design-build contract.**

24 *[(5)] (6) No provision of this section shall be construed to apply to a “railroad” as defined in*
25 *ORS 824.200.*

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

27 30.140. (1) As used in this section[:], **“construction agreement” means any written agree-**
28 **ment for the planning, design, construction, alteration, repair, improvement or maintenance**
29 **of any building, highway, road excavation or other structure, project, development or im-**
30 **provement attached to real estate including moving, demolition or tunneling in connection**
31 **therewith.**

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

34 *[(b) “Construction agreement” means any written agreement for the planning, design, construction,*
35 *alteration, repair, improvement or maintenance of any building, highway, road excavation or other*
36 *structure, project, development or improvement attached to real estate including moving, demolition or*
37 *tunneling in connection therewith.]*

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

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

43 (3) This section does not affect any provision in a construction agreement that requires a person
44 or that person’s surety or insurer to indemnify another against liability for damage arising out of
45 death or bodily injury to persons or damage to property to the extent that the death or bodily injury

1 to persons or damage to property arises out of the fault of the indemnitor, or the fault of the
2 indemnitor's agents, representatives or subcontractors.

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

13 *[(5)] (4) This section does not apply to:*

14 (a) Any real property lease or rental agreement between a landlord and tenant whether or not
15 any provision of the lease or rental agreement relates to or involves planning, design, construction,
16 alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or
17 rental agreement is not planning, design, construction, alteration, repair, improvement or mainte-
18 nance of real property; **or**

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

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

21 *[(6)] (5) No provision of this section shall be construed to apply to a "railroad" as defined in*
22 *ORS 824.200.*

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

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