



February 8, 2024

**Clackamas County Board of Commissioners
Policy Position
Relating to Public Liability with Design Professionals**

Clackamas County opposes SB 1575: The proposed legislation will increase costs to the public and legislate away standard contractual remedies designed to hold design professionals accountable to their work.

The County opposes SB 1575 for the following reasons:

1. Design professionals are in the best position to defend the quality of their actions and design. Requiring the county to defend a claim until the design professional is found to be negligent by a court or arbitrator will place an increased financial burden on public agencies for these types of claims. Counties should not be required to spend taxpayer dollars beyond the existing contract to defend a claim for negligence by design professionals.
2. There is no reason to treat design professionals differently from any other contractor. The proposed legislation gives special treatment to design professionals by essentially removing the ability to require those professions to defend a claim for their own negligence. If design professionals do not want to agree to a duty to defend, that should be addressed through contract negotiations, not through legislation. Additionally, it is the expectation of the county that design professionals are scoping this cost into their contract bids already. If they are not, that is a choice by the firm and the public should not bear the burden of such decisions.
3. Design professionals already have significant protection in the standard of care, which requires the design professional to exercise an ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances and conditions. It is reasonable to expect a design professional to enter into a contract that requires it to defend against allegations that this standard is not met. This should motivate the design professionals to do their best work for the County and its taxpayers.
4. In situations where the duty to defend work has been triggered, most scenarios have been handled amicably through arbitration, limiting the need to go to trial. Removing this safety net will naturally remove the motivation to resolve issues pre-trial, lead to more litigation, and build distrust between firms and public agencies.

We urge a “no” vote on SB 1575.

Please contact Trent Wilson at twilson2@clackamas.us for more information.