



Oppose Senate Bill 1575 Design Professional Liability Risk Shift

The Oregon Association of County Engineers and Surveyors (OACES), an affiliate of the Association of Oregon Counties (AOC), represents Oregon's 36 county public works agencies and road departments and provides a forum to share best practices and overcome challenges. County roads are a critical component of Oregon's integrated road system – counties are responsible for over 60% of Oregon's non-federal road network. OACES appreciates the opportunity to submit testimony in opposition to Senate Bill 1575.

Senate Bill 1575 prohibits the ability of contractors and owners to negotiate duty to defend provisions in their contracts with design professionals. If passed, this bill would remove the ability of parties to contract the upfront legal costs of design professionals. The practical implication of this change will be to require contractors and owners to defend the liability of design professionals until a case is concluded. This is an unfair shifting of the legal burden from design professional to public contracting agencies, like counties.

The bill's changes are particularly problematic in today's construction market. Removing design professionals from contract provisions that assign risk is problematic in an era where construction design goals are fluid and not just about fitness, durability, and aesthetics, but entail energy efficiency, carbon reduction, and environmental ratings of buildings. Indemnity provisions are becoming more important as design professionals attempt to accomplish other societal goals for owners. Freedom to contract risk is ever more important in today's construction environment. SB 1575 would preclude those considerations to the detriment of all parties.

Liability cases can range from \$30,000 to \$300,000, with an average of \$100,000 depending on the speed at which a settlement is reached. Longer cases incur \$45,000 costs to acquire expert witnesses, \$15,000 costs to conclude depositions, and \$40,000 costs in attorney billable hours. Counties historically face ten cases over a ten year period, while cities face two or three. While a percentage of that cost may be recovered as fault is adjudicated, there is no way to estimate the proportional amount of attorneys' fees counties can be reimbursed at the end of the legal proceedings. Additionally, the cost recovery process takes an average of two years to complete, which requires a social discount rate to accurately assess how the expense is felt in present-value calculations. With inflation presently at 3.4 percent, a two year delay will cost counties \$6,800 annually on average, even if the legal proceedings rule that a county can recover 100 percent of the attorney's fees.

In an attempt to deal with insurance coverage and availability issues, which is the real problem, the design professionals instead are placing the burden of liability on other parties to the contract and ultimately the taxpayer. A solution must put every party to the contract on even footing for contract agreements. Therefore OACES opposes SB 1575. County road officials are appreciative of the time and effort put into this process, and we look forward to continuing this conversation to find collaborative approaches and sustainable solutions.

Oregon Association of County Engineers and Surveyors (OACES)

Phone: (855) 843-5176 | Web: or-oaces.org

Address: 1212 Court Street NE, Salem, OR 97301