
PROFESSIONAL LAND SURVEYORS SUPPORT

SENATE BILL 1575-A

Testimony to the House Committee on Rules / February 29, 2024

By: Darrell W. Fuller / fuller_darrell@yahoo.com / 971-388-1786



Chair Fahey and Members of the Committee:

The Professional Land Surveyors of Oregon (PLSO) is a professional association representing the interests of licensed Professional Land Surveyors in Oregon. Surveyors are licensed and regulated by the Oregon State Board of Examiners for Engineering & Land Surveying (OSBEELS). Professional Land Surveyors provide a wide range of services which includes location of property boundaries, land use planning, topographic design surveys, construction layout services and more. PLSO has approximately 600 members across the state, including both public and private sector professional surveyors. PLSO is affiliated with the National Society of Professional Surveyors (NSPS), which represents surveyors nationally.

PLSO is a partner in the coalition of design professionals who drafted and support Senate Bill 1575-A.

A “duty to defend” provision requires the design professional to defend the government agency or general contractor against all claims ... **ALL CLAIMS** ... against the government related to an entire project.

While the issues surrounding design and construction liability are complex, I’ve used the following hypothetical to explain concerns about contracts mandating land surveyors and other design professionals to agree to duty to defend provisions in contracts:

Imagine you’re selected to provide the land surveying for a new city library. As an emerging small business, you are excited to do this visible and prominent project. It will be the largest contract you’ve earned. You sign the contract provided by the municipality, and it includes a duty to defend clause.

You complete your surveying work without incident or error. More than a year later, the painting contractor paints the building green. The city wanted blue. The dispute results in a lawsuit by the painting contractor for lack of payment.

At this point, the local government, using the duty to defend provision, will require you -- the land surveyor -- to pay the legal costs associated with the suit brought by the painting contractor, which is completely unrelated to surveying work. Once settled and determined that you had no liability in the dispute between the municipality and the painting subcontractor, you might not even get your “contribution” to the legal defense fund reimbursed.

And, if there is anything on which everyone does seem to generally agree, it is that no insurance product currently exists in the marketplace for design professionals which will pay for up front legal defense costs arising solely from a duty to defend obligation, thus forcing design professionals to pay out of pocket whenever a duty to defend provision is enforced. Such a claim could easily put a firm out of business and the potential cash flow liability is so worrisome that many firms simply refuse to bid on public contracts.

Land surveyors (and other design professionals) do have professional liability insurance. They will defend themselves against claims of professional liability from start to finish. Senate Bill 1575-A does not absolve design professionals from legal claims of defective work. However, it does protect them from being forced to pay legal bills on claims against others inarguably unrelated to the design professional’s work.

In an effort to assuage concerns of other stakeholders, we supported the -1 Amendment in the Senate, which added a ten year sunset clause along with other changes.

This bill is the product of more than four years of negotiating and outreach to the impacted parties.

Please vote “aye” to send SB1575-A to the House floor with a “do pass” recommendation. Thank you.