

February 29, 2024

House Committee on Rules  
Oregon State Capitol  
900 Court Street NE  
Salem, Oregon 97301

Re: Senate Bill 1575-A

Dear Chair Fahey, Vice-Chairs Helfrich and Kropf, and Members of the House Committee on Rules:

Thank you for the opportunity to provide testimony on Senate Bill 1575-A. The Port of Portland opposes the bill, which would fundamentally shift the risk of defective design from design professionals to public agencies, and ultimately to taxpayers.

A service provider whose work creates a risk should assume the risk of resulting liability. Because design professionals are in the best position to control and mitigate the risks their work creates, contracting agencies rightfully require them to defend the agency against design defect claims. Designers should remain responsible for carrying that defense burden at all times, not just after liability is established.

This bill would treat construction design professionals differently from other professionals and service providers. Like other agencies, the Port protects taxpayers by consistently requiring consultants and other service providers to defend and indemnify the Port. It is not clear why this particular group of professionals should be allowed to shift their business risk to taxpayers.

Shifting upfront defense costs from the designer to the agencies will not eliminate insurance costs, or access to insurance, as a barrier to entry for small design firms. Even if the duty to defend is removed from contracts, design firms will still be required to carry professional liability insurance, for instances in which they are found negligent.

The Port empathizes with the concerns being raised, but transferring risk to public agencies is not the right approach nor would it achieve the desired result. We welcome an opportunity to continue discussions to find more viable options to address these concerns, but in its current form, the Port urges a NO vote on SB 1575-A.

Respectfully,

Carmen Merlo, State Affairs Manager