

Support of SB 1575-A

February 29, 2024

Dear members of the Rules Committee,

My name is Tony Roos representing Kittelson & Associates, Inc. We have been in business in Oregon since 1985 and employ over 400 Engineers, Planners, Technicians and Professional staff across the country, with over 100 located between our Bend and Portland offices. Our firm plans and designs solutions to improve the safety and efficiency of transportation systems throughout Oregon. I am writing today to urge you to vote YES for Senate Bill 1575-A.

Oregon's engineers, architects and land surveyors care deeply about our communities, which is why we invest in our local economy, creating jobs and housing for Oregonians. Right now, we are being forced into unfair contracting practices called "duty to defend" clauses, which require us to pay the legal expenses for those involved in construction projects even before fault is determined. This is detrimental to all design firms but especially women, minority, veteran owned and emerging small businesses. Because engineers, architects and land surveyors are being forced to shoulder the legal liability and legal expense without any insurance to cover this onerous clause, not all Oregon firms are participating in public agency projects. This contract clause negatively impacts many Oregon public construction projects including low-income public housing to help address Oregon's homelessness crisis and its associated infrastructure.

As a large firm, Kittelson is certainly not immune to the potential for financial risk when having to accept a non-negotiable duty to defend contract provision, however, this requirement is especially damaging to emerging and small businesses that Oregon's affirmative action legislation strives to protect and whom Kittelson attempts to employ as subconsultants wherever possible. Such firms can be financially wiped out having to defend a single claim. The duty to defend requirement is a deterrent in both Kittelson's ability to attract emerging and small business and negotiate successful subagreements.

Imagine the following situation: We design a roadway improvement having signed a contract with the un-insurable duty to defend language. During construction, the Contractor leaves a manhole lid open and a citizen walking through the construction zone falls into the manhole. When the Citizen sues the City, the City will turn to our contract and say that we have to defend the City (pay for all the City's lawyers as well as our own). Clearly we would have done nothing wrong in our design, yet we have to pay (out of pocket) to defend the City. This is simply not a fair business practice. Everybody in the lawsuit should defend themselves and then split the total costs based on the percentage responsible.

We respectfully ask the Rule Committee to vote YES on SB 1575-A. Passing this bill would eliminate bad and unfair contract practices and ensure everyone involved in a project pays their fair share of legal expenses. This isn't about shirking responsibility – it's about ensuring fairness so everyone is paying their own way and adequately protected by their insurance.

Thank you for your service and we are happy to be a resource if you have additional questions.

Thank you.

Kittelson & Associates, Inc.



Tony Roos, PE, F.SAME
Principal Engineer