

Transportation Division

February 29, 2024

Chair Fahey, Vice-Chair Helfrich, Vice-Chair Kropf, and Committee Members

Multnomah County strongly opposes SB 1575A. This bill removes a primary avenue of defense for public agencies when we are in a dispute over the impacts of our public works projects with a third party.

Public agencies like the County hire design professionals to provide expertise that we do not have in house. When they provide us with drawings and specifications stamped by professional engineers, they are affirming that the documents are suitable to be used to construct the public works project and that the public works project, if constructed according to the plans and specifications, will be safe to use.

If a dispute comes up with a third party (the Contractor, the public, another public agency) over work that they have designed, the design professional has the expertise to defend both themselves and the public agency in the resolution of that dispute.

The County requires all parties that we contract with - contractors, subcontractors, tradespeople, design professionals - to defend and indemnify the County for any claims and damages, including attorney fees, resulting from their work. This requirement is a part of all County contracts, and the County is not aware of any design professional having difficulty in obtaining insurance coverage meeting this requirement.

This bill gives design professionals (more accurately, their insurers) special status beyond what is afforded to all other trades as to legal fees for claims relating to their negligence. This special status would put the public agency at a disadvantage, as well as all other trades, in any claim situations. It puts the design professional in a particularly advantageous position for claim settlement as they will not be responsible for costs until the claim is fully resolved, allowing them to drag on any dispute process without financial consequence. This could be especially damaging to many of the smaller subcontractors that work on public works projects, increasing their insurance and legal costs, which would have a negative impact on our efforts to use more MWESB and Veteran owned businesses on our projects.

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Further, this bill would greatly increase public agencies' costs for claims by Contractors alleging that the design was unbuildable or that the design resulted in increased construction costs. The Public Agency typically could require the design professional to defend us against this type of claim, but this bill would allow them to pass along the costs of this defense to the Public Agency until it was resolved. This would put the design professional in charge of a claim that they are not paying for, and remove some of their motivation to try to resolve it quickly.

Finally, we believe that the broad language of this bill would apply to builders (they would be considered the design professional) under certain alternative project delivery methods such as design-build where the builder team is responsible for much of the design of the project. This would increase the risk of alternative contracting for public agencies because the public agency would be responsible for the builders legal fees in any dispute that came from the project until the disputes were definitely resolved. Adding risk and cost to alternative project delivery methods and possibly eliminate them as viable alternatives for constructing complicated public works projects.

SB1575A appears to shield designers from the consequences of their negligence by making the process to hold them accountable so impractical that public agencies will not be able to rely on them to defend their design. We think that this would put the design professional at an unfair advantage in the resolution of disputes with the public agency and the contractor and transfer the burden and cost of defending the work of design professionals to the public agency, and ultimately to the taxpayers.

Multnomah County urges your opposition to SB 1575A.

Sincerely,

Jon Henrichsen, PE
County Engineer
Transportation Division Director
Department of Community Services
Multnomah County