

March 1, 2024

Chair, Julie Fahey
Vice-Chairs Kropf and Helfrich
Members of the House Committee on Rules
Submitted Electronically: <https://olis.oregonlegislature.gov>

RE: RE: Testimony Summary to the House Committee on Rules in Support of SB 1575-A

Greetings Chair Fahey, Vice Chairs Kropf and Helfrich, and members of the House Committee on Rules. The following is a written summary of the spoken testimony in support of SB 1575-A presented on February 29, 2024. For the record, my name is Mike Olson with AssuredPartners. For the past 20 years I have been insurance broker focused solely on insurance for design firms. My brokerage AssuredPartners insures over 5000 design firms across the country and throughout Oregon.

Much discussion surrounding SB1575-A has centered around available insurance. The following are some foundational elements of design firm insurance programs.

- Design firms purchase Professional Liability insurance (Errors and Omissions) to cover their services for which they are licensed and indemnifies a third party for claims resulting from a design firms' negligence.
- Professional Liability insurance was developed in the 1950's and is a staple of what designs firm's purchase to this day and while I cannot testify with total certainty, nearly every design firm in the State of Oregon purchases Professional Liability and will continue to do so if this bill is passed.
- Professional Liability covers the attorney's fees of the design firm to represent and defend itself.
- Professional Liability reimburses a Public Agency for their attorney's fees incurred to the extent the design professional is at fault. This reimbursement is commonly stated as covered in the insurance policy.
- Professional liability does NOT cover defense of Public Agencies at the inception of a claim.

SB 1575-A distills down to one question; **Does a design firm have an obligation to pay the attorney's fees for a Public Agency at the inception of a claim or a conclusion of a claim?**

- If passed, the answer is at the conclusion of claim. A Public Agency will be reimbursed attorney's fees which are insured by Professional Liability insurance.
- If unpassed, the attorney's fees will continue to be asserted at inception of the claim and uninsured.

Opponent testimony submitted before this committee alleges design firms are shifting their responsibility to the taxpayers of Oregon. These statements are misleading. Attorney fees of the Public Agency in Oregon are reimbursed by professional liability insurance already carried by design firms to the proportionate percentage of fault of the design firm. Opposition testimony never seems to mention Public Agencies are reimbursed for their attorney's fees at conclusion of a claim. The fiscal analysis presented by the Oregon Department of Administrative Services (DAS) in previous sessions also fails to mention these costs are reimbursed by the design firm at conclusion of a claim. SB 1575-A is about the timing of these costs.

No opposition testimony addresses the appropriateness of whether the Design firm should be responsible for the defense of a Public Agency when the design firm has been absolved of liability. Most opposition letters contain statements implying any claim regardless of merit should be borne by the design firm because they only reason the Public Agency is involved in litigation. The following are two examples:

1. *"It's simply common sense that **any liability stemming from a project** should be addressed by those providing the service and they should be the parties responsible for the cost of defending claims against their design and construction."* See written Testimony Carly Sylva-Gabrielson, of Washington County, dated February 28, 2024.
2. *"The duty to defend should rest on the shoulders of the party or firm providing the service because the **liability could only arise as a result of their services...**"* See Letter submitted by Tyler Janzen, on behalf of Local Governments Against SB 1575, dated February 29, 2024.

Both statements assert **liability** against the design firm at inception, not conclusion of a claim. In addition to defending itself, the design firm must incur attorney's fees of the Public Agency on the sole basis the design firm is assumed to be guilty – before the merits of the claim have been presented. Does a Public Agency have zero responsibility and/or take no risk for the project they fund and own?

SB 1575-A is the result of multi-year effort of working with all parties including public agencies, contractors, legal professional and the private sector. The common feedback from all is "go buy insurance" or "talk to the insurance commissioner" as "this is an insurance issue". There is no commercially viable or sustained insurance product to cover this risk. This is not a new issue, it has been around for decades. Suggestions for the design firms to develop a product, a policy, or a fund misses the most critical question; Why? Why should it be up to the design firm to develop insurance to cover another party attorney's fees, not their own? Design firms are already providing insurance for the reimbursement of these attorney's fee. Development of a product for the sole benefit of an entity other than the design firm should not fall on the design community.

This bill is good for business, the State, and taxpayers of Oregon, because it ensures the design firm has available insurance can protect the state. There is no benefit to the State if these costs are uninsured and the design firm cannot pay it. Please support this bill.

Sincerely,



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