

Testimony to the
Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213
March 22, 2021

Dear Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation.:

For the record, my name is Brandon Nevers representing Kittelson & Associates, Inc, an Oregon founded Transportation Engineering and Planning firm. Our particular area of expertise results in 80% of our clients being governmental agencies. Kittelson has been a long-standing member of Oregon's business communities, having been incorporated in Oregon since 1985 and employing a nationwide staff of 260 diverse and talented professionals. I am writing today to strongly support Senate Bill 213.

Senate Bill 213 will bring fairness to professional services contracts by ending the inclusion of duty to defend clauses in public and private agreements. This duty to defend clause is onerous as it requires the design professional be responsible to defend an owner or other party against claims asserted by a third-party even if the design professional is not negligent. This duty to defend clause is not fair, equitable nor inclusive.

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.

We respectfully ask this Committee to support SB213, and the -2 amendments, and send this bill to the Senate floor. This is good business policy that will assist firms of all sizes across the State in being able to successfully engage in government projects, using government funds, by removing this onerous duty to defend clause.

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

Sincerely,
KITTELSON & ASSOCIATES, INC.



Brandon Nevers
President/CEO