

March 22, 2021

Senate Committee on Judiciary and Ballot Measure 110 Implementation

Re: Testimony in Support of SB 213

Good morning, Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. For the record, my name is Richard Roché representing Parametrix, an engineering, environmental, and planning consulting firm with approximately 550 staff, including 110 staff in our Portland and Bend, Oregon offices. We are a former Minority Business Enterprise (MBE) firm and believe strongly in creating opportunities to promote the growth and development of Small Business Enterprise (SBE) firms. I am writing today to strongly support the -2 amendment to 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, or inclusive.

This requirement in professional services contracts is not fair to design firms of any size, but it is especially damaging to emerging and small businesses that typically do not have the ability to advocate against these contract requirements. These duty to defend clauses are a major deterrent to competing for certain projects, many of which are with governmental agencies.

Below is a specific example of how the current duty to defend language in many public contracts unfairly hurts firms:

Parametrix was hired by a government agency to review a developer's permit application to build a subdivision. The review did not include a design check of the engineer who did the work for the developer; and we were not the engineer of record for this project. The review was to merely make sure that the engineer used the proper standards when the design was done. A year later, an adjacent landowner of the subdivision, whose property was already classified as a wetland, sued the government agency claiming that their land was being flooded and that the agency was negligent in approving the developer's permit for the subdivision. The agency looked at our contract, seeing that it had duty to defend and indemnify language, then called us and demanded we defend them.

The agency never claimed that Parametrix did anything wrong; they said they did not care if we were negligent, defend means defend. We declined to defend the agency, and for more than a year we were involved with the claim. We estimated that it would have cost us \$400K to go to trial to prove we were not negligent, so we prudently mediated the claim and settled for \$40K and incurred \$100K legal costs.

This type of unfair language is in approximately 70 percent of our contracts with public agencies. Parametrix always attempts to remove the language from the contracts, but public agencies typically tell us to accept it, or someone else will. We have walked away from contracts because of the language. However, many SBE firms do not have the ability to decline work based on unfair contract terms.

inspired people. inspired solutions. making a difference.

As a result of our experiences, we believe the best way we can change things is to go to the legislature and voice support for legislation making this type of language unenforceable.

We respectfully ask that the committee support the -2 amendment to Senate Bill 213 and send this bill to the Senate floor. This is good business policy that will assist firms across the state in being able to engage in projects, including many government-funded projects, by removing this onerous duty to defend clause.

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

Thank you.

Sincerely,

PARAMETRIX

A handwritten signature in blue ink, appearing to read "Richard Roché".

Richard Roché, R.G.
Oregon Operations Manager