



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

March 22, 2021

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 Larry Fox representing DOWL, LLC a 420-person multi-discipline consulting engineering firm. We have been in business in Oregon since 1966 and employ a staff of 138 in six offices in Oregon. 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 professional liability 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.

The duty to defend 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 don't have the ability to advocate against these contract requirements. This uninsurable contractual liability is a major deterrent to compete for projects, many of which are with Oregon governmental agencies.

As DOWL's Chief Operating Officer I am faced daily with the challenging choice between "betting the farm" by signing uninsurable contract terms or not having enough work to keep my employees gainfully employed. SB213 will make up-front duty to defend clauses unenforceable, thereby eliminating this barrier to participate in government-funded projects for all firms, and for small and minority-owned businesses in particular.

We respectfully ask this committee to support the -2 amendment to SB 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 construction 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.

Sincerely,

Larry Fox, P.E.
Chief Operating Office