



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

March 22, 2021

Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. For the record, my name is Karen Tatman, PE representing Quincy Engineering, a firm that specializes in helping cities, counties, and ODOT deliver their publicly funded roadway / highway improvement projects across the state. We have been in business in Oregon since 2004 and employ 16 engineering and support staff. 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 disallowing 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 has no negligence. This duty to defend clause is not fair, equitable or inclusive. When a client causes a design professional to defend them, it is *very* costly.

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 don't have the ability to advocate against these contract requirements. We find duty to defend clauses to be a major deterrent to compete for certain projects, many of which are with governmental agencies.

Our firm's experience with duty to defend has been that it is a way for public agencies to pass their own legal costs on to design professionals. It is coming from agency Risk Managers and not from agency Project Managers or Public Works officials. The duty to defend clause used to be less common. These days, it is showing up in nearly all public agency contracts. Firms like ours who work almost exclusively with public agencies either walk away from the work or sign and hope for the best. We want to continue to work for public agencies as their projects support Oregon communities. We don't want to stop working for our agency clients.

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We are not supportive of asking the insurance industry to offer another product line to insure our firm for the duty to defend clause. That just raises our insurance costs, which increases the overall project price to taxpayers. Duty to defend clauses are already disallowed in other states and we support disallowing it in Oregon too.

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.

Thank you.

Sincerely,

Karen Tatman, PE
Principal Engineer