

March 18, 2021

Senator Floyd Prozanski  
Chair, Committee on Judiciary & Ballot Measure 110 Implementation  
Oregon State Senate  
900 Court Street NE, S-413  
Salem, Oregon 97301

**Testimony to Senate Committee on Judiciary & Ballot Measure 110 Implementation  
Support for -2 Amendment to SB 213**

Dear Senator Prozanski,

I am writing this letter to request your support for the -2 amendment to Senate Bill 213. For the record, my name is Gerry Heslin and I represent Cornforth Consultants, Inc. We are a small business consulting firm that specializes in geotechnical engineering. We have been incorporated in Oregon since 1983 and employ 30 full-time staff.

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 small businesses that typically don't have the ability to advocate against these contract requirements. In our practice, duty to defend clauses are a major deterrent to compete for certain projects, many of which are with governmental agencies.

In the past three years, we have declined to work on five large projects and several small- to medium-sized projects because we were not able to negotiate duty to defend out of the contract. I estimate these projects would have represented approximately \$1.4M in revenue for our firm. Many of these projects were awarded to large businesses located outside of Oregon that could tolerate the risk that duty to defend clauses present.

On behalf of my staff, I respectfully ask you and your committee 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 for your consideration in this matter. If you or any of your committee members have any questions, I am happy to be a resource.

Sincerely,

**CORNFORTH CONSULTANTS, INC.**

Gerry M. Heslin, P.E.

Vice President