



March 18, 2021

Senator Floyd Prozanski, Chair  
Senator Kim Thatcher, Vice-Chair  
Senate Committee on Judiciary and Ballot Measure 110 Implementation

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

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

On behalf of PBS Engineering and Environmental Inc. (PBS), a 260 person firm with offices in Portland (headquarters), Bend, and Eugene, Oregon and 150 Oregon employees, I am writing to voice our strong support of 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 partners that typically don't have the ability to advocate against these contract requirements. We find these 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 included managing contract provisions that have caused us to forgo project opportunities. As a design firm, PBS works hard to keep our overhead manageable, which results in cost savings to our clients. The addition of a contract clause such as duty to defend, simply adds an unfair burden that we must accommodate in our budgeting.

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. Please feel free to contact me at 503.248.1939 or [mark.leece@pbsusa.com](mailto:mark.leece@pbsusa.com) with any questions or comments.

Sincerely,

Mark Leece, PE  
Chief Operating Officer

Guy Neal, PE  
Chief Executive Officer