

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 Scott Wallace, and I represent Wallace Group, Inc., a 16-person geo-environmental engineering and construction service firm in Bend, Oregon. Our practice has been in business in Oregon since 1998 and we are proud to employ geotechnical engineers, geologists, environmental scientists, special inspectors, field technicians, and administrative support professionals. 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 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 been that when clients, particularly in the public sector, are unwilling to negotiate duty to defend contract terms, we are simply eliminated from contract consideration. There end result is we miss out on work that we are very qualified to perform because of onerous contract language.

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,

A handwritten signature in blue ink, appearing to read "R. Scott Wallace".

R. Scott Wallace, R.G.
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