

Letter / Testimony to the
Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213 with -2 Amendment

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 Tina Adams representing Casso Consulting, Inc. I am writing today to strongly support the -2 amendment to Senate Bill 213 and have my support on the record in case I am not called upon to speak during the hearing.

My engineering company is a small DBE and MWESB firm based in Beaverton and employs 6 engineers. We have been in business since 2012 and work almost exclusively on public agency projects as a subconsultant to larger engineering firms.

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 disadvantaged and emerging small businesses such as Casso Consulting. Small firms like mine 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 even compete for public agency projects, many of which explicitly want small business participation.

Our firm's experience with duty to defend has been that when we ask to have the contract language modified in our subcontract in order to be insurable, we are flat out denied. As a DBE firm, we do not have the financial means to hire lawyers to defend a government agency for the actions of their public employees. It doesn't seem fair that I should be willing to take a loan out against my house to pay for defense of a government agency in order for our small company to work on their project. Since the duty to defend language is an uninsurable contract term that brings with it significant risks to our firm and me personally, I have to make the hard decision and walk away from contracts and teaming on projects that we would love to work on.

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 consideration. I am happy to be a resource if you have additional questions.

Sincerely,

Tina Adams, PE, President