



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

March 22, 2021

(personalize to your own tone, situation, and experience)

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 Anthony Weller and I am the owner and president of CESNW, Inc., a small engineering and land surveying company in Tigard Oregon. We have been in business in Oregon for over 36 years, a registered ESB, and we employ 10 people. 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 to either decide not work for certain agencies and private companies because the risk is too great for the small fee we might earn on the project. This limits our opportunity to grow. However as some of our current Clients begin to incorporate this language into their contracts, it will be a difficult decision to whether we stay in business or assume the risk for something that we cannot purchase insurance, at any cost to pay for. This not puts my family at risk but also our employees and their families.

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,

President, CESNW, Inc.