



March 22, 2021

Senator Floyd Prozanski, Chair  
Senate Committee on Judiciary and Ballot Measure 110 Implementation  
Oregon State Capitol  
900 Court St. NE  
Salem, OR 97301

**RE: Opposition to SB 213**

Dear Chair Prozanski and Members of the Committee:

Thank you for the opportunity to provide this letter in opposition to SB 213. We are concerned that SB 213 will unfairly cause taxpayers to become an insurer against negligent design work and single out the design industry for special treatment that other contractors would not enjoy.

When a local government undertakes a construction project we often require design professionals and other contractors to not only indemnify, but also defend against third-party suits relative to the project. We do this for two main reasons: first, because damage or injury to a third-party may be due to faulty design or construction (or a combination of the two) and second, to insulate taxpayers from legal costs associated with negligent design and/or construction. SB 213 unfairly burdens taxpayers with the risk associated with professional design work that they do not control.

Current law already proportionally limits a design consultant's liability in the context of being an indemnitor in a public contract. If a third-party injury on a public project was ultimately determined to be caused by bad design, the design consultant would only be obligated to indemnify the public owner up to the percentage of its negligence. In our view it is fair that all contractors incur the cost of defending such claims – not taxpayers – in an effort to sort out what if any liability exists related to one or more contractors.

At the end of the day the duty to defend should rest on the shoulders of the party or firm providing the service because the liability could only arise as a result of their services. As a result, duty to defend ought to be treated as the cost of doing business on public projects. We are confident that design consultants build liability costs into the rates paid by public owners when they are hired for design work on public projects, even though we don't anticipate passage of this legislation will result in lower rates for design services. What's more, design consultants have successfully advocated for public contracting laws that only allow the most qualified design consultants to be selected for work on public projects (*see* ORS 279C.110). It would follow that if only the most highly qualified firms are performing this work, the risk of third-party liability would be quite low. Therefore, we think it is fair that design consultants stand by their work and not shift their business risk to taxpayers.

We encourage the committee to reject SB 213.

