

Date: March 22, 2021

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

From: Jon Henrichsen, Transportation Director/County Engineer

Subject: SB 213 (2021 Regular Session)

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee,

Thank you for the opportunity to submit this letter opposing SB 213. This bill would create special protections for design professionals, beyond what is afforded to other construction trades, to the detriment of other parties, including owners and governmental agencies doing construction work. Multnomah County believes SB 213 creates unfair advantages for design professionals and unnecessary risks for government agencies and the taxpayers to whom we are accountable.

Unfair advantages for design professionals

This bill would significantly reduce the benefit of the insurance that design professionals are required to carry and shift legitimate business risks from design professionals to County taxpayers.

When awarding construction contracts, local governments often require design professionals and other contractors to not only indemnify, but also defend against third-party suits relative to the project. This is done for two 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.

Furthermore, shielding design professionals from the requirement to defend or indemnify their client against claims related to negligence in design until proportional fault is established in trial, arbitration, or alternative dispute method, would shield designers from the consequences of their negligence. It would also give them an advantage from a negotiating standpoint as costs of any dispute method would not be born equally along the way.

Impacts to Multnomah County

Multnomah County regularly contracts with design professionals. SB 213 would negatively impact our ability to manage project risks and could result in the County paying for errors caused by designers that we hire.

As a project owner, the County has required designers to defend their work when disputes arise with contractors over the intent or suitability of a design, or when a designed element fails due to negligence in design as opposed to negligence in construction. If the County had been unable to recover damages from design professionals on past construction projects such as bridge projects, it would have cost the County hundreds of thousands of dollars to fix their errors.

In closing, I urge the committee to reject SB 213. This bill creates unfair advantages for design professionals and would create significant risks for contractors, local governments, and businesses that hire them.

Thank you,

Jon Henrichsen

Transportation Director/County Engineer
Department of Community Services