



Testimony to the
Senate Committee on Judiciary in Support of SB 848

February 23, 2023

Good afternoon, Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary. For the record, my name is William L. Nickels, Jr., president and owner of Foundation Engineering, Inc. Foundation Engineering is a small geotechnical engineering firm located in Corvallis. We have been in business in Oregon since 1982 and currently employ seven professional engineers, one engineering geologist, and two support staff. I am writing today to strongly support Senate Bill 848.

Oregon's engineers, architects and land surveyors care deeply about our communities, which is why we invest in our local economy, creating jobs and housing for Oregonians. Right now, we are being forced into unfair contracting practices called "duty to defend" clauses, which require us to pay the legal expenses for those involved in construction projects even before fault is determined. This is detrimental to all design firms, but especially to women and minority owned, and emerging small businesses. Because engineers, architects and land surveyors are being forced to shoulder all the legal liability and legal expense far beyond what they're able to get insured for, fewer projects are being designed and built in our communities. This includes low-income public housing to help address Oregon's homelessness crisis.

Over the past 40 years of business, we have noted that often the "duty to defend" clauses are part of contracts from large corporations with significantly greater resources than our firm. However, they still attempt to pass the legal liability on to the design team. Because some of these clauses are so onerous, our insurance companies have warned us they cannot provide coverage for such language. That has forced us to forego this work, since we cannot accept contractor liability that is not covered by our insurance. As a small business, we simply do not have the resources to take on this liability and, as a result, we lose out on such projects.

We respectfully ask this committee to support SB 848. Passing this bill would eliminate bad and unfair contract practices and ensure everyone involved in a project pays their fair share of legal expenses. This isn't about shirking responsibility, rather, it's about ensuring fairness so everyone is paying their own way and adequately protected by their insurance.

Thank you for your service and we are happy to be a resource if you have additional questions.

Sincerely,

FOUNDATION ENGINEERING, INC.



William L. Nickels, Jr., P.E., G.E.
President