



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 Nicholas McMurtrey representing Consor, North America Inc. We have been in business in Oregon since 1980 and employ approximately 175 staff in the state. 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 women, minority and emerging small businesses (M/W/ESB). 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.

Our firm's experience with duty to defend has been time consuming. We expend our resources to scour the legal fine print of contracts searching for this problematic language. Once found, we engage with the author of the contract to have it removed, which puts us at risk for losing the contract. A significant amount of time and energy is spent strategizing and pursuing these contracts, which makes it very difficult to walk away from the problematic contract language addressed by SB 848.

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 – 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.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicholas McMurtrey".

Nicholas McMurtrey PE, LEED AP, ENV SP