

February 22, 2023

Senator Floyd Prozanski, Committee Chair
900 Court Street, NE, S-413
Salem, Oregon 97301
Submitted Electronically to <https://olis.oregonlegislature.gov/>

**Testimony to Senate Committee on Judiciary
Support for Senate Bill 848**

Dear Senator Prozanski,

This letter presents my testimony to your committee in support of Senate Bill 848. For the record, my name is Gerry Heslin and I represent Cornforth Consultants, Inc. We are a small business design firm engaged in geotechnical engineering and employ 28 people. I am writing to express my strong support for 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. 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.

As a result of duty-to-defend contract clauses, our firm chooses not to pursue an average of 10 to 15 projects per year. Oftentimes our decision is based on sample contract language provided in Request for Proposal documents, but we often decline to sign a contract after we have won the work and attempted to negotiate contract language. Since duty-to-defend clauses are not covered by professional liability policies, our firm's choice is to risk the existence of the firm by signing the contract or to walk away from potential work.

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. Our goal is not to shirk our responsibility but to ensure fairness so everyone is paying their own way and adequately protected by their insurance.

Thank you for your service and I appreciate the opportunity to provide this testimony.

Sincerely,

CORNFORTH CONSULTANTS, INC.



Gerry M. Heslin, P.E.
Vice President

cc: Senators J. Manning, K. Thatcher, D. Linthicum, S. Gelser