

Kimley»Horn

February 27, 2023

RE: Support for SB 848

To: Senate Committee on Judiciary

I'm writing on behalf of Kimley-Horn and Associates, Inc, a firm providing design professional services in Oregon since 2021. We currently have 16 employees in our Portland office.

Kimley-Horn is wholly-owned by its professional staff, and managing risk is of critical importance to us. We experience a number of potential clients in Oregon that insist on unfair indemnity and defense provisions, which can require us to pay for damages and a client's attorney fees even if we have not been negligent and before anyone had determined that we were negligent. This type of liability is inequitable and also uninsurable. Professional liability insurance covers only liability to the extent caused by professional negligence. It does not cover any duty to defend obligation or any duty to indemnify in the absence of negligence.

We also note that numerous states across the county are now passing this kind of anti-indemnity and duty to defend legislation. In our experience, those statutes have been extremely beneficial to firms providing professional services, while still providing clients sufficient legal remedies. This proposed legislation does not in any way insulate design professionals from their own negligence or fault.

Oregon's engineers have a primary responsibility to protect public safety. Inequitable contract provisions are detrimental to all design firms but especially emerging small businesses. As a large firm, Kimley-Horn can decide to turn down work because of bad contract language. But smaller firms often do not have that option and typically have limited leverage to negotiate language putting them especially at risk.

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.

Sincerely,



Brian Valentine, P.E. (OR)
Senior Vice President