

Testimony to the
Senate Committee on Judiciary in Support of SB 1575
February 8, 2024

Good afternoon Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary. My name is Tom Westover representing Cornforth Consultants, Inc., a small business specializing in geotechnical (i.e., earthwork) engineering services. We are uniquely qualified in earthquake engineering, earthen dams, levees, and emergency response to landslides. We were founded in Oregon in 1983 and employ 30 people. I am writing today to strongly support Senate Bill 1575.

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, veteran-owned firms and small businesses. Because engineers, architects and land surveyors are being forced to shoulder the legal liability and legal expense without any insurance to cover this onerous clause, not all Oregon firms are participating in public agency projects. This problem persists and extends to low-income/public housing projects that are needed to help address Oregon's homelessness crisis.

Considering our firm's unique specialty, we are frequently retained by large government agencies such as the Oregon Dept. of Transportation, Federal Highway Administration, US Army Corps of Engineers, as well as local towns, cities and counties to assist with capital improvement projects and/or emergencies. In many cases, we serve on project delivery teams with agency engineers, and our role can be small relative to the overall project size. However, in nearly every instance, we are forced to accept "duty to defend" contract clauses. We have tried repeatedly to strike these clauses, but government attorneys treat them as non-negotiable. We strongly believe that is an inappropriate transfer of risk to a small business.

We respectfully ask this committee to **support SB 1575**. 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.

Sincerely,



Vice President

Cornforth Consultants, Inc.