



Testimony Presented to the
House Committee on Rules
In Support of Senate Bill 1575
February 29, 2024

Chair Fahey, Vice Chair Kropf, Vice Chair Helfrich, and members of the House Committee on Rules. My name is Tina Adams, and I am a Professional Engineer and President of Casso Consulting, an engineering firm in Beaverton. Casso Consulting is a 10-person firm certified as a Disadvantaged, Minority, Woman-owned, Emerging Small Business due to my ownership. I am testifying in full support of Senate Bill 1575A.

My perspective presented on this bill is that of a small business owner advocating for legislation that would ensure everyone involved in a project pays their fair share of legal expenses. Be assured that I am carrying the message for hundreds more engineers, architects and land surveyors that share my deep concern over public works projects that require a duty to defend clause. Allowing this practice to continue is not a good government policy and is unfair on many levels. This bill isn't about shirking responsibility — it's about ensuring fairness so everyone is paying their own way and adequately protected by their insurance.

I am proud to say that by most measures I would be considered a success story. At a young age, I showed an aptitude in math and science and was fortunate to discover engineering after being accepted into college. As the first college graduate in my family, I have a career that I enjoy while affording our children more stability and opportunities than I had growing up. With a lot of time and hard work, I am now an owner of a 10-person civil engineering firm that I started in 2012 as its only employee.

As a Hispanic woman in this profession, I sought to create and build a business with a reputation that produces good work, so that we could get more work. My business vision was to always have a wide range of project opportunities and challenges, thereby allowing our engineers to continue their professional growth. As a small firm owner without the financial means to have a lawyer review every contract, I have had to become very educated over the last 11 years on the risks associated with the language embedded into the contracts that I sign. No one told me when starting out in this profession that I'd end up spending this much time reviewing contract language just to be able to get to the design part.

Now, as I consider the benefits of growing my firm, I must weigh the various business variables including the hypocritical and patronizing duty to defend clause. Seeing the duty to defend clause even at the proposal stage is a major barrier to my company's growth as I know that it could result in my personal financial ruin. As a subconsultant to the prime, I have no authority to negotiate the language out of the contract but need to make the go/no go decision at teaming. I have walked away from teaming opportunities as a result. Those agencies don't even know how many firms like ours simply don't respond to their request for proposals to avoid that level of risk exposure.

My company's paying the legal fees to defend another party's actions over which we have absolutely no control is unfair, and those costs should never be considered "part of doing business". As a small firm, we would probably not be able to pay for the up-front legal fees for all involved parties if a suit were to be filed. We can, should, and agree to be responsible for our own actions and liability. I understand just our portion of the uninsurable legal costs even to get to a settlement on a claim where we have no fault could be well over \$50,000.



Contracts for our company's services can be as low as \$8,000. In addition, the public agency contract terms extend between 3 and 6 years after construction. Even though our small company only has 23 open contracts, my company is still subject to the terms and conditions of over 90 closed contracts, almost all of which include some type of duty to defend clause. The risk of having to pay uninsurable legal fees for some claim over which we have no liability only increases while we wait for this legislation to be passed.

With that magnitude of out-of-pocket uninsurable costs, every time I sign a contract with this clause, I am essentially risking my business, the equity in my home, and everything that I have been able to build. In addition, I am risking my employee's jobs and confidence in our future. I fail to see how any of those outcomes are in the interests of the public or the taxpayer.

I am frustrated and dismayed by the state and local governments that require a 20% to 30% small business participation goal for public works projects but still allow their legal counsel and procurement officers to include this small business killer clause. This practice reeks of the right hand not knowing what the left hand of government is doing. The outcome communicates an insincerity of helping the actual small, women and minority owned businesses to be successful. Again, allowing this practice to continue is not good government policy and is unfair.

It is not lost on me that within the various committees in the State Capital, your legislative colleagues are seeking ways to encourage young women and minorities to follow a math and science career path. Millions of dollars are focused on career and technical training and for higher education investment in faculty and infrastructure. These other committee hearings are focused on identifying and encouraging the next generation of minority students, like the younger me, to enter this field. Please support Senate Bill 1575A so that Oregon's small businesses in engineering, architecture, and land surveying can be shining examples of success.

Today, I am urging you to put fairness and good public policy into action. Your support of Senate Bill 1575A would help my company and hundreds of other women and minority and emerging small businesses in the engineering, architecture and land surveying design professions. If the duty to defend clause is allowed to remain in government contracts, Oregon's small businesses will be left behind.

Please support Senate Bill 1575A and put an end to the unfair and antiquated duty to defend clause. Fairness should be the goal of governmental policies and Senate Bill 1575 will ensure fairness.

Thank you in advance for your support,

Tina Adams, PE
President