



**WINDSOR
ENGINEERS**

**Testimony to the
Senate Committee on Judiciary & Ballot Measure 110 Implementation
In Support of SB 213**

March 22, 2021

Good morning Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary and Ballot Measure 110 Implementation. My name is Travis Tormanen, I am a Professional Engineer with over 20 years of consulting experience in Oregon. I am representing Windsor Engineers. We have been doing business with Oregon municipalities since 2018 and employ 30. I am writing today to strongly support the -2 amendment to Senate Bill 213.

Senate Bill 213 will bring fairness to professional services contracts by ending the inclusion of duty to defend clauses in public and private agreements. This duty to defend clause is onerous as it requires the design professional be responsible to defend an owner or other party against claims asserted by a third-party even if the design professional is not negligent. This duty to defend clause is not fair, equitable or inclusive.

This requirement in professional services contracts is not fair to design firms of any size, but it is especially damaging to emerging and small businesses that typically do not have the ability to advocate against these contract requirements. We find these duties to defend clauses to be a major deterrent to compete for certain projects, many of which are with governmental agencies.

My experience with duty to defend has been that it can be frustrating to frequently be facing this requirement and it is not always practical to negotiate changes to the language. It would be much more fair but also more efficient for all parties if there was clear requirements in place on this topic.

We respectfully ask this committee to support the -2 amendment to SB 213 and send this bill to the Senate floor. This is good business policy that will assist firms across the state in being able to engage in construction projects, including many government-funded projects, by removing this onerous duty to defend clause.

Thank you for your service and we are happy to be a resource if you have additional questions.

Thank you.

Sincerely,

Travis W. Tormanen, PE
Partner
Windsor Engineers