



**FROELICH**  
ENGINEERS

March 19, 2021

**Oregon State Senate Committee on Judiciary & Ballot Measure 110**

Chair Prozanski

Vice-Chair Thatcher

**Re: 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. For the record, my name is Tim Terich representing Froelich Engineers, Inc. We have been in business in Oregon since 1983 and employ 27 Oregonians. I am writing today to strongly support the -2 amendments 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 don't have the ability to advocate against these contract requirements. We find the duty to defend clauses to be a major deterrent to compete for certain projects, many of which are with governmental agencies.

Our firm's experience with duty to defend has been related to challenges with contracts and disputes. Our industry pays significant sums for errors & omissions insurance that provide protection to our clients for the quality of design professional's work. However, very few insurance companies are willing to cover the cost to pay for the "duty to defend" our clients. This is an issue in our industry that needs resolution. It makes Oregon design professional less competitive than out-of-state firms and reduces our ability to obtain work. This change will not affect the client's ability to seek compensation if design problems do occur on a project.

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.

**Tim R. Froelich, PE, SE**  
Partner / Principal

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

Thank you.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Timothy T. Terich', with a long horizontal stroke extending to the right.

Timothy T. Terich, PE, SE  
Vice President