



Testimony to the
Senate Committee on Judiciary in Support of SB 848

February 23, 2023

Dear Chair Prozanski, Vice Chair Thatcher and members of the Senate Committee on Judiciary. For the record, my name is Marjorie Wolfe representing Wolf Water Resources, a small woman owned engineering business. We have been in business in Oregon since 2014 and employ 30 people. I am writing today to strongly support Senate Bill 848.

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 and emerging small businesses. Because engineers are being forced to shoulder all the legal liability and legal expense far beyond what they're able to get insured for, fewer projects are being designed and built in our communities.

Our firm's experience with duty to defend has been that we forego work when this cannot be negotiated out of the contract. We spend hours of time negotiating when we could be working and that leads to back and forth between myself, my lawyer, my insurance company and my clients costing us all money and delaying the work if we ever get there. I have asked about insurance that my public clients claim is available but like many insurance instruments it costs a lot and still only reimburses what is technically our own negligence. This does not protect me or the client. I have to explain over and over again that if they enforce this it means the end of my firm. I cannot afford defend them when I am not at fault and have no control over what they are being taken to court for.

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. 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,

Marjorie Wolfe, PE, CFM
Wolf Water Resources