



## 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:

My name is Justin Monahan, General Counsel with Otak, a mid-size architecture, engineering, and related services firm headquartered in Portland. We recently celebrated our 40<sup>th</sup> year serving our clients, including the state of Oregon, many counties and other districts, cities, local communities, and private companies.

I am writing today to strongly support Senate Bill 848. Oregon's engineers, architects, and related service providers care deeply about our communities, which is why we invest in our local economy, creating jobs and housing for Oregonians. Right now, many clients still insist on contract language that includes a "duty to defend," which may require us to pay the legal expenses of others involved in construction project claims even before fault is determined. This is detrimental to all design firms but especially for historically disadvantaged business entities. We at Otak are making substantive efforts to recruit and sustain diverse project and subconsultant teams. However, we are caught in the middle trying to absorb "duty to defend" clauses in client contracts while limiting the exposure of our historically disadvantaged subconsultant partners so they can sustain and grow their businesses. Because these contract clauses force engineers, architects, and related service providers to shoulder legal expenses that may be far beyond their own share of fault, fewer projects are being designed and built in our communities. This includes low-income public housing to help address Oregon's homelessness crisis.

We respectfully ask this committee to support SB 848. Passing this bill would eliminate unfair contract practices and ensure everyone involved in a project pays their fair share of legal expenses. This is not about shirking responsibility – it is about correcting an issue that has developed in the law and ensuring everyone pays their own way for the damages attributable to their work.

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

Sincerely,  
**Otak, Inc.**

A handwritten signature in blue ink, appearing to read "JDM", is positioned above the typed name.

Justin Monahan, Esq.  
General Counsel