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Testimony to the Senate Committee on Judiciary in Support of SB 1575

February 8, 2024

Good afternoon, Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary. For the record, my name is Matt Shanahan, representing GRI, an Oregon geotechnical consulting firm. We have been in business in Oregon since 1984 and currently employ 60 people. I am writing today to strongly support Senate Bill 1575.

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, veteran-owned, and emerging small businesses. Because engineers, architects, and land surveyors are being forced to shoulder the legal liability and legal expenses without any insurance to cover this onerous clause, not all Oregon firms are participating in public agency projects. This problem persists and includes low-income public housing to help address Oregon's homelessness crisis and its associated infrastructure.

Our firm's experience with duty to defend has included turning down public works projects due to the uninsured risk associated with duty to defend, as well as having the threat of a duty to defend used against our firm in a baseless threat of claim. These defense clauses put our firm at risk, reduce opportunities to grow the company, and put Oregonians to work on our staff. GRI believes in being professionally responsible for our design work, and professional liability insurance covers indemnification and the reimbursement of reasonable defense costs for our negligent errors and omissions. The contractual duty to defend clause, however, requires up-front payment of defense regardless of fault and cannot be covered by professional liability insurance. Unproven allegations and baseless claims should not be an obstacle to Oregon engineering firms performing services for important public works projects.

We respectfully ask this committee to support SB 1575. 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 is not about shirking responsibility; it is 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.

Thank you.

Sincerely,

GRI