

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

Good afternoon Chair Prozanski, Vice Chair Thatcher, and members of the Senate Committee on Judiciary. For the record, my name is Richard Roché representing Parametrix, a consulting company with 750 employee owners providing engineering, environmental, and survey services for public and private clients. We have office throughout the western United States, including 150 employee owners in our Portland, Bend, and Eugene offices. We have been in business in Oregon since 1989. 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 expense without any insurance to cover this onerous clause, not all Oregon firms are participating in public agency projects. This problem persists and also includes low-income public housing to help address Oregon's homelessness crisis and its associated infrastructure.

Below is a specific example of how the current duty to defend language in many public contracts unfairly hurts firms:

Parametrix was hired by a government agency to review a developer's permit application to build a subdivision. The review did not include a design check of the engineer who did the work for the developer; and we were not the engineer of record for this project. The review was to merely make sure that the engineer used the proper standards when the design was done. A year later, an adjacent landowner of the subdivision, whose property was already classified as a wetland, sued the government agency claiming that their land was being flooded and that the agency was negligent in approving the developer's permit for the subdivision. The agency looked at our contract, seeing that it had duty to defend and indemnify language, then called us and demanded we defend them.

The agency never claimed that Parametrix did anything wrong; they said they did not care if we were negligent, defend means defend. We declined to defend the agency, and for more than a year we were involved with the claim. We estimated that it would have cost us \$400K to go to trial to prove we were not negligent, so we prudently mediated the claim and settled for \$40K and incurred \$100K legal costs.

This type of unfair language is in approximately 70 percent of our contracts with public agencies. Parametrix always attempts to remove the language from the contracts, but public agencies typically tell us to accept it, or someone else will. We have walked away from contracts because of the language. However, many SBE firms do not have the ability to decline work based on unfair contract terms.



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 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 I'm happy to be a resource if you have additional questions.

Sincerely,

**Parametrix**

A handwritten signature in blue ink, appearing to read "Richard Roché".

**Richard Roché, RG, LHG**

Senior Vice President

