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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 Margareth Y. Berciano, representing Haley & Aldrich, Inc., a mid-size employee-owned Environmental Engineering firm. We have been in business in Oregon since 1985 and employ 983 staff members across the United States. 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 privately held employee owned 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.

The duty to defend is a constant pain-point between practitioners eager to expand their services into the public sector and those entrusted with mitigating the risk undertaken by contract. A key component of a project's risk management plan as it pertains to the services of engineers, architects, and land surveyors, is professional liability insurance, but that blanket of protection against the unexpected is not available for the "duty to defend," and is in fact barred by the contractual liability exclusion found in professional liability insurance policies. In short, public agencies would be better served by eliminating the "duty to defend" from its contracts and instead requiring reimbursement of defense costs to the extent the design professional is determined by law to have been negligent, as this is both covered by professional liability insurance and apportions risk appropriately to each negligent party to the claim.

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 we are happy to be a resource if you have additional questions.
Thank you.

Sincerely,

A handwritten signature in black ink that reads "Margareth Y. Berciano".

Margareth Y. Berciano
Corporate Counsel

