

## **Statement is Support of HB 554 – Fairness in Public Contracts**

Chairman Butler, Vice Chair Lanese, Ranking Member Boggs, thank you for the opportunity to present proponent testimony on HB 554. My name is Robert Gavin, Risk Manager with Oswald Companies. Oswald represents over 600 Ohio architectural and engineering firms (A/E) for their professional liability insurance needs and is the largest agency representing the A/E profession in Ohio. I've spent 35 years in the legal and insurance world of the A/E and related disciplines. We strongly believe HB 554 – Fairness in Public Contracts is a positive step not only for the A/E profession but for all Ohio public entities for two distinct reasons that will be examined. But first, the A/E profession truly is comprised mostly of small businesses. The average A/E firm consists of about 10-20 employees. More than 1/3<sup>rd</sup> (~ 200) of our A/E clients consist of 10 employees or less. There are relatively few large A/E firms. Revenue is relatively small and profit margins are thin, 10% would be considered by many to be a good year. Firms are thinly capitalized. They have no measurable assets other than used office furniture and equipment.

Because of the nature of the A/E “business” it is vitally important not only to the A/E firm but also to their client that any agreement be insurable under the A/E professional liability policy. If a claim is made against an A/E the overwhelming odds are it will be a professional liability claim. If the claim is not insurable under the professional liability policy, it is unlikely the client will be compensated for damages. It is customary for the client to require the A/E to maintain professional liability insurance. It is also customary for the client to insist on a contractual indemnity from the A/E. A huge and financially dangerous disconnect, to both the client and the A/E, occurs when the client insists on a contractual indemnity that is not insurable under the very professional liability insurance the client also requires.

The A/E professional liability policy, with very limited exceptions, only provides coverage for damages claimed against an A/E to the extent those damages arise from the failure of that A/E to meet its professional standard of care, in other words professional negligence. It is not uncommon for Ohio public entities to insist upon contractual indemnities that far exceed this and that are in fact quite uninsurable under the very professional liability policy the public entity requires of the A/E. We believe the public taxpayer is done a huge disservice when this occurs because the professional liability policy is usually the only source of funding for a claim.

The other, often not talked about, result of such uninsurable contractual indemnity provisions is that a large percentage of A/E firms will not pursue public projects because of the uninsurable nature of those contracts. They cannot take the financial risk of doing so. This result negatively impacts the public because it significantly reduces the pool of well qualified A/E firms willing to pursue public projects. This is an unquantifiable but certainly negative result of an uninsurable indemnity provision.

Thank you for the opportunity to present our opinions on this bill. We hope, not only for the Ohio A/E firms and the employees they employ, but also for the taxpayer at large, that HB 554 – Fairness in Public Contracts Indemnity is passed as it currently reads. I'll be happy to try and answer any questions you may have.