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April 30, 2019

Representative Stephen D. Hambley, District 69
The Ohio House of Representatives
133rd General Assembly
77 S. High Street, 11th Floor
Columbus, Ohio 43215

Re: House Bill 159

STATEMENT IN SUPPORT OF HB 159

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, and members of the committee, I am an attorney licensed to practice in the State of Ohio. I practice throughout the State representing architects, landscape architects, engineers, and surveyors. The majority of my practice is dedicated to representing design professionals, and I have been involved in litigation in all manner of cases regarding both public and private projects. I have lectured and presented seminars to designers on the subject of construction documents and risk allocation. I have authored articles and newsletters focusing on liability issues that affect the practice of architecture and engineering. I am a member of the Central Ohio Chapter of COGENCE Alliance, a partnership of owners, architects, engineers, and contractors dedicated to improving the industry and project delivery. I also represent many of the national insurers of architects and engineers. I have represented some of the largest design firms in Ohio, as well as the single practitioner.

The practice of architecture or engineering is a very competitive practice. The great majority of designers do not have the luxury of being in such a niche practice that they are pursued by owners. Rather, regardless of how skilled or proficient a design firm may be, it finds itself in a very competitive arena. As such, they are vulnerable to unfair contracts in order to secure work. This should never be the case if the project is a public improvement.

One of the single largest areas of exposure for designers pertains to indemnity provisions inserted into contracts by owners/developers. Private contracts are a matter of negotiation. This is not true of public projects. Indemnity provisions design firms and their insurers bring to my attention are fraught with unfair obligations. Provisions that masquerade as indemnity that in reality revise a designer's standard of care are common. Both local and State level public authorities have created contract provisions that tie the designer to a level of perfection or near perfection. Perfection is not the industry standard of care, and for good reason. Plans and specifications always leave room

for interpretation for builders and allows for project flexibility. But, when onerous indemnity provisions require near perfection by the designer, breach results in an obligation to pay all costs, attorneys' fees, and expenses to the public authority, regardless of whether the designer violated the industry standard of care. This results in harmful outcomes industry-wide, as such provisions may not be covered by insurance, leaving the design firm with large exposure that may not be covered by assets, greatly impacting the long term success of the firm, while leaving the public authority with damages which may not be recoverable.

It is time for this to be addressed and House Bill 159 is the correct vehicle to do so. The proposed Bill does not prohibit indemnity provisions in public improvement contracts. Rather, it focuses on fairness, restricting the scope of indemnity to its traditional legal concept, and imposing upon designers indemnification obligations only for their proportionate share of the tortious conduct at issue. House Bill 159 will be a boon for designers, while having minimal impact on public authorities. It deserves broad support.

Very truly yours,

Frederick T. Bills

FTB/nnw

cc: Rep. Thomas F. Patton, District 7
Rep. Richard D. Brown, District 20
Beth Easterday