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### **Testimony in Support of HB 159 – Fairness in Public Contracts**

Chairman Hambley, Vice Chair Patton, Ranking Member Brown, thank you for the opportunity to present proponent testimony on HB 159. My name is Robert Gavin, Risk Manager with Oswald Companies. Oswald represents over 700 Ohio architectural and engineering firms (A/E) for their professional liability insurance needs and is the largest insurance agency representing the A/E profession in Ohio. I've spent 35 years in the legal and insurance world of the A/E profession. We strongly believe HB 159 – Fairness in Public Contracts is a positive step for both the Ohio A/E profession and Ohio public entities for the reasons stated below. But first, the Ohio A/E profession truly is comprised mostly of small businesses. The average Ohio A/E firm consists of about 10-15 employees. More than 1/3rd of our A/E clients consist of 10 employees or less. 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 public client and Ohio taxpayers that any agreement be insurable under the A/E professional liability policy. If a claim is not insurable under the professional liability policy, it is unlikely the client will be compensated for damages. The A/E professional liability policy 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, i.e. professional negligence. It is customary for a client to require the A/E to maintain professional liability insurance and to insist on a contractual indemnity from the A/E. A huge and financially dangerous disconnect, to both the public client and the A/E, occurs when the client insists on a contractual indemnity that unfairly imposes contractual liability on the A/E and is not insurable under the very professional liability insurance the client requires of the A/E.

In no way is the A/E profession trying to avoid responsibility for damages caused by their professional negligence. But the A/E profession should not be held responsible for a greater share of damages than that caused by the A/E's negligence. Some erroneously believe imposing such unfair and uninsurable indemnities on the A/E somehow saves the public entity money by lowering that entities insurance costs. That belief is unfounded. From an actuarial standpoint it is impossible for an insurance underwriter to gauge any purported costs savings accruing from unfair contractual provisions imposed upon the A/E profession. In fact, far from saving the Ohio public entity money these unfair provisions impose higher costs on those entities. Professional liability insurance carriers view public projects in Ohio as a higher risk because of poor claims experience on those projects. This poor claim experience leads to higher professional liability insurance premiums to the A/E profession who in turn pass these costs onto their clients.

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The other, often not talked about, result of such uninsurable contractual indemnity provisions is that a very large percentage of Ohio 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 because they cannot risk paying for damages they didn't cause and for which they cannot buy insurance. This result negatively impacts the public because it significantly reduces competition. We all understand greater competition results in lower costs to the consumer as well as a greater variety of design options the consumer can choose from.

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 159 – Fairness in Public Contracts Indemnity is passed as it currently reads. I'll be happy to try and answer any questions you may have.