



American Council of Engineering Companies
of Ohio

**Testimony of
Beth Easterday, President
American Council of Engineering Companies of Ohio
to the
Senate Judiciary Committee
regarding Senate Bill 56
April 20, 2021**

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the committee. I am Beth Easterday, President of the American Council of Engineering Companies of Ohio. I am here today to offer our support for Senate Bill 56.

For the record, my association is made up of 145 engineering firms, located all over the state of Ohio, many of which are engaged in the design of our public water and wastewater systems, bridges, highways, building structures and systems and environmental projects. My members are made up of large international firms, down to small firms under 10 employees. In fact, over 50% of ACEC Ohio's membership is made up of small engineering consulting businesses under 50 employees.

Design professionals, as a matter of basic fairness, should not be asked to indemnify and/or defend another party for losses that the designer did not cause, cannot insure against and were caused by factors beyond the designer's control. Unfortunately, some public authorities are still putting indemnification clauses in their contracts that require a design professional to indemnify above and beyond what the design professionals' professional liability insurance will cover. Above and beyond the standard of care or professional negligence.

The fundamental purpose of this bill is fairness, right now design professionals are being asked to defend public entities against third party claims before there is a determination that the design professional has committed an error. The costs of such defense can be staggering and come out of the design professional's pockets, not their professional liability insurance policy. The reason being the professional

liability insurance will only cover legal costs to the extent caused by the negligent errors and omissions of the design professional and does not provide defense for its client.

This bill narrows the statute --does not eliminate-- the obligation a design professional must shoulder to indemnify a public entity to just those situations where the design professional has been found to have committed an error. The bill will help engineering consulting companies and architectural firms by providing clarity and certainty that indemnification of third party claims will not be a part of entering public authority contracts.

To date, eleven states (Arizona, California, Colorado, Florida, Georgia, Indiana, Kansas, Maryland, Michigan, Minnesota and Montana) have enacted statutes such as SB 56.

This bill before you passed the Ohio House in December of 2020 (HB 159) after reaching consensus on the language with all interested parties. There was just not enough time to have this bill heard in the Ohio Senate before the last General Assembly adjourned.

ACEC Ohio appreciates your consideration of the bill today. Thank you for allowing me to testify, I will be happy to try to answer any questions you might have.