

BILL ANALYSIS

Senate Research Center
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S.B. 799
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law prevents governmental agencies from requiring design professionals to indemnify or defend those entities for any liability other than that caused by or resulting from negligent acts, intentional torts, failure to pay subcontractors, or infringement of intellectual property. Any provision that goes beyond this limitation is void. Many entities are requiring, in professional services contracts, design professionals to defend the entity upon a mere allegation of negligence by the design professional. These types of contractual provisions are typically uninsurable under a design professional's professional liability insurance policy.

S.B. 799 clarifies that a duty to pay defense costs or attorneys' fees is tied to a finding of fault and that a governmental agency may seek reimbursement for reasonable attorneys' fees related to such a finding. The bill also requires that governmental agencies' contracts require design professionals to perform services consistent with the professional skill and care ordinarily provided by similarly situated professionals.

As proposed, S.B. 799 amends current law relating to indemnification and duties of engineers and architects under certain governmental contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 271.904, Local Government Code, as follows:

Sec. 271.904. New heading: ENGINEERING OR ARCHITECTURAL SERVICES CONTRACTS: INDEMNIFICATION LIMITATIONS; DUTIES OF ENGINEER OR ARCHITECT. (a) Provides that a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify, hold harmless, or defend the governmental agency against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

(b) Provides that, if a contract for engineering or architectural services to which a governmental agency is a party contains an indemnification covenant or promise authorized under Subsection (a), the covenant or promise may not provide for a duty to defend but may provide that the governmental agency may seek the reimbursement of reasonable attorney's fees after a final adjudication of liability due to an act described by Subsection (a).

(c) Requires that a contract for engineering or architectural services to which a governmental agency is a party require a licensed engineer or registered architect to perform services with the professional skill and care ordinarily provided by engineers or architects practicing in the same or similar locality and under the same or similar circumstances; and as expeditiously as is prudent considering the ordinary professional skill and care of an engineer or architect and the orderly progress of the project.

(d) Provides that in a contract for engineering or architectural services to which a governmental agency is a party, a provision establishing a different standard of care than a standard described by Subsection (c) is void and unenforceable.

(e) Creates this subsection from existing text and makes no additional change.

SECTION 2. Provides that Section 271.904, Local Government Code, as amended by this Act, applies only to a contract for which a request for proposals or a request for qualifications is first published or distributed on or after the effective date of this Act. Provides that a contract for which a request for proposals or a request for qualifications is first published or distributed before the effective date of this Act is governed by the law in effect on the date the request was published or distributed, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2015.