

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2049
By: Darby et al. (Elife)
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, governmental agencies are prevented from requiring certain design professionals to indemnify or defend the agency for any liability other than that caused by or resulting from negligent acts, intentional torts, failure to pay subcontractors, or infringement of intellectual property. Interested parties claim that many agencies are requiring these professionals to defend the agency upon a mere allegation of negligence by the professional and that these types of contractual provisions in a professional services contract are typically uninsurable under a professional liability insurance policy. C.S.H.B. 2049 seeks to amend current law to address this issue.

C.S.H.B. 2049 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 or hold harmless the governmental agency against liability for damage, rather than 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, except as provided by Subsection (c), 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 defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, the agency's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the governmental agency exercises control. Authorizes a covenant or promise to provide for the reimbursement of a government agency's reasonable attorney's fees in proportion to the engineer's or architect's liability.

(c) Authorizes a governmental entity, notwithstanding Subsection (b), to require in a contract for engineering or architectural services to which a governmental agency is a party that the engineer or architect name the governmental agency as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

(d) 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:

(1) with the professional skill and care ordinarily provided by competent engineers or architects practicing in the same or similar locality and under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect and the orderly progress of the project.

(e) 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 (d) is void and unenforceable. Provides that if a contract contains a void and unenforceable provision, the standard of care described by Subsection (d) applies.

(f) 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.