

**STORAGE NAME:** h1083.brc

**DATE:** March 6, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION & CONSUMER AFFAIRS  
ANALYSIS**

**BILL #:** HB 1083

**RELATING TO:** Design Professional Contracts

**SPONSOR(S):** Representative Bense

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS
  - (2) JUDICIARY
  - (3) GENERAL GOVERNMENT APPROPRIATIONS
  - (4)
  - (5)
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I. SUMMARY:

Architects and engineers will no longer be required to indemnify other parties to personal services contracts for the negligence of that other party.

Fiscal data is not available at this time.

The bill is effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

The bill does not support principles of less government or individual freedom to the extent that it limits freedom of contract. Parties to a personal services contract with an architect or engineer will no longer be able to freely negotiate indemnity agreements.

B. PRESENT SITUATION:

Section 725.01, F.S., provides that an obligation to pay another's debt must be in writing. This includes indemnity agreements<sup>1</sup>. The general rule is that there is no indemnity for one's own active negligence.<sup>2</sup> However, parties to a contract have authority to allocate risks among the parties and may provide indemnity when done in accordance with law. Section 725.06, F.S., proscribes requirements for an indemnity agreement in construction contracts.<sup>3</sup> Courts have held that 725.06, F.S., only applies in situations where a party to a construction contract seeks indemnity for their own active negligence<sup>4</sup>.

Architects and engineers are generally bound by indemnity clauses in construction contracts, with only nominal consideration, that make these professionals responsible for the negligence of other parties beyond their control. These indemnity clauses are boiler-plate type provisions. Representatives of the architects and engineers purport that, by

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<sup>1</sup>"A contract for indemnity is an original undertaking by which the promisor agrees to protect the promisee against loss or damage in and by reason of liability to another person." 12 Fla. Jur. 2d, Contribution, Indemnity, and Subrogation sec. 2.

<sup>2</sup> 12 Fla. Jur. 2d, Contribution, Indemnity, and Subrogation sec. 2.

<sup>3</sup>Section 725.06, F.S., was enacted by the 1972 Legislature and placed limitations on indemnity clauses in construction contracts. Under this section of law, all indemnification agreements between parties to a construction contract are void and unenforceable unless the indemnification provision was included in the project specifications or bid documents and met one of two other requirements: 1) a monetary limit or 2) specific consideration. This provision applies to any person contracting for construction and architects, engineers, contractors (sub and sub-subcontractors included), and materialmen. All aspects of construction are covered. Provided that the indemnity agreement meets the requirements of s. 725.06, F.S., parties are free to establish mutually acceptable terms.

<sup>4</sup>12 Fla. Jur. 2d, Contribution, Indemnity, and Subrogation sec. 31.

**STORAGE NAME:** h1083.brc

**DATE:** March 6, 2000

**PAGE 3**

virtue of competitive bid award processes, architects and engineers generally lack the ability to fairly and equitably negotiate the terms of indemnity agreements.

**C. EFFECT OF PROPOSED CHANGES:**

Persons, public and private, can no longer include indemnity agreements in professional services contracts with design professionals (architects and engineers) that require the design professional to indemnify that person for that person's own negligence. Those persons contracting with design professionals will bear the costs of their own negligence. Design professionals can only indemnify for their own actions and the actions of those persons operating under their control. All other indemnities made by design professionals are void for public policy reasons.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1.** Creates s. 725.08, F.S., limiting indemnity agreements with design professionals, voiding all indemnity agreements not in compliance with this section, defining professional services contract, defining design professional, and limiting the effect of the section.

**Section 2.** Amends s. 725.06, F.S., removing architects and engineers from the section.

**Section 3.** Providing an effective date upon becoming law.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. **Revenues:**

None

2. **Expenditures:**

See fiscal comments section below.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. **Revenues:**

None

2. **Expenditures:**

See fiscal comments section below.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Architects and engineers will no longer bear the costs of indemnifying other parties for the other parties' own negligence.

D. FISCAL COMMENTS:

Governmental entities will bear the costs of their own negligence. The impact of this increased cost is unknown. Fiscal data is not available at the time of this analysis.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Absent fiscal data, the bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

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