

STORAGE NAME: h1083s1z.brc
DATE: May 1, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 00-162, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
FINAL ANALYSIS**

BILL #: CS/HB 1083
RELATING TO: Design Professional Contracts
SPONSOR(S): Committee on Judiciary and Representative Bense
TIED BILL(S): None

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 6 NAYS 0
 - (2) JUDICIARY YEAS 5 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (W/D)
 - (4)
 - (5)
-

I. SUMMARY:

The act prohibits indemnification agreements in professional services contracts between design professionals and public agencies. Any contract provision that purports to do so is void. "Design professional" means architects, landscape architects, engineers, and land surveyors and mappers. "Professional services contract" is defined also.

However, the act creates an exception to the rule. Public agencies can require that design professionals indemnify against the negligence, recklessness, or intentionally wrongful conduct of the design professional and persons under the control of the design professional.

The restrictions on indemnity clauses does not affect contracts entered into before the effective date of the act.

The act takes effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

The act places a new regulation on parties' ability to contract.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Currently, construction contracts can contain indemnification clauses. In an indemnification clause, one party can agree to protect a second party against loss or damage specified in the contract and can agree to cover negligence by the second party. In other words, one party can agree to pay the costs of another party's negligence. Section 725.06, Florida Statutes, limits indemnity agreements in construction contracts. Pursuant to the statute, all indemnification agreements between parties to a construction contract are void and unenforceable unless: 1) a monetary limit is placed on the extent of the indemnity and is included in the project specifications or bid document, if any; or 2) specific consideration is included in the contract in exchange for the indemnity provision. This provision applies to any person contracting for construction with architects, engineers, general contractors, subcontractors, sub-subcontractors, and materialmen. If the indemnity agreement meets the requirements of section 725.06, F.S., parties are free to establish mutually acceptable terms.

Currently, design professionals can be bound by indemnity clauses in construction contracts that make these professionals responsible for the negligence of other parties. Representatives of the architects and engineers claim that they are often unable to negotiate public contracts without indemnity agreements requiring them to cover events beyond their control. These clauses, the parties claim, make insurance expensive or impossible to obtain.

C. EFFECT OF CHANGES:

This act creates a new statutory provision that would limit the types of indemnity agreements that may be included in professional services contracts between design professionals and public agencies. The act defines "design professionals" as a person licensed to practice architecture or landscape architecture under chapter 481, F.S., a person licensed to practice engineering under chapter 471, F.S., or a person licensed to practice land surveying and mapping under chapter 472, F.S. Under the act, contracts between design professionals and public agencies cannot require the design professional to indemnify the agency against liability, damage, loss, claim, action, or proceeding. Contracts that purport to do so are void.

However, the act provides that public contracts with design professionals can require that the design professional indemnify the agency against damages, losses, and costs, including attorney's fees, caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional or persons under their control.

The act defines "professional services contract" to make clear what kinds of contracts are included under the act.

These new provisions do not affect contracts entered into before the effective date of the act.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 725.08, F.S., to provide that, in public contracts, design professionals can indemnify for their own acts of negligence, recklessness, or intentionally wrongful conduct and such acts of persons under their control; voiding all other indemnifications in public contracts; defining terms; limiting the provisions to public contracts entered into after the effective date.

Section 2. Provides 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:

None

D. FISCAL COMMENTS:

Public agencies contracting with design professionals will bear the costs of their own negligence. The impact of this increased cost is unknown.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The act does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

STORAGE NAME: h1083s1z.brc

DATE: May 1, 2000

PAGE 4

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The act 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 act 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:

On April 19, 2000, the House passed the bill, as amended, 114 yeas, 0 nays. On April 28, 2000, the Senate substituted CS/HB 1083, 2nd ENG, for CS/SB 1996. Following second and third readings, the Senate passed CS/HB 1083, 2nd ENG, 37 yeas, 0 nays.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 14, 2000, the Committee on Business Regulation & Consumer Affairs adopted an amendment to include land surveyors and mappers regulated by chapter 472, F.S., in the definition of design professional.

On March 23, 2000, the Committee on Judiciary adopted two additional amendments. The first amendment permits only public agencies to require design professionals to indemnify the agency against the design professionals' negligence. The bill as originally filed allowed all clients to require such indemnity clauses. The second amendment clarified that landscape architects are included in the definition of design professionals. The bill was reported favorably as a committee substitute.

On April 12, 2000, a floor amendment was adopted on third reading in the House that replaced the word "client" with the word "agency" on page 1, line 30 of the bill. The bill passed the House, as amended, 118 yeas, 0 nays. Because of unintended consequences of the aforementioned floor amendment, on April 18, 2000, the House adopted a motion to reconsider the vote by which the bill passed and leave the bill pending. On April 19, 2000, the House took up the bill on unfinished business and adopted an amendment removing section 2 of the bill. Removing section 2 of the bill maintained the protections of current law regarding indemnification agreements by architects and engineers in private construction contracts. The House passed the bill, as amended, 114 yeas, 0 nays.

STORAGE NAME: h1083s1z.brc

DATE: May 1, 2000

PAGE 5

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Eric Lloyd

Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

L. Michael Billmeier, J.D.

P.K. Jameson, J.D.

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Eric R. Lloyd, J.D.

Rebecca R. Everhart