

**STORAGE NAME:** h1083s1.jud

**DATE:** March 30, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
JUDICIARY  
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
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill prohibits professional services contracts between design professionals and their clients from requiring that the design professional indemnify the client against any liability, damage, loss, claim, action, or proceeding. Any contract that purports to do so is void.

The bill 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.

However, the restrictions on indemnity clauses will not affect contracts entered into before the effective date of the bill.

The bill includes architects, landscape architects, engineers, land surveyors and mappers in the definition of design professionals.

The bill would take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes  No  N/A

The bill 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. s. 725.06, F.S. This provision applies to any person contracting for construction with architects, engineers, general contractors, subcontractors, sub-subcontractors, and materialmen. Id. If indemnity agreement meets the requirements of section 725.06, Florida Statutes, 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 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 PROPOSED CHANGES:

Section 1 of this bill creates a new statutory provision that would limit the types of indemnity agreements that could be included in professional services contracts between design professionals and their clients. Under the bill, contracts between design professionals and clients that are not public agencies could not require the design professional to indemnify the client against liability, damage, loss, claim, action, or proceeding. Contracts that purport to do so are void.

The bill provides that public agencies that contract with design professionals can require that the design professional indemnify against damages, losses, and costs, including attorney's fees, caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional. Under this bill, parties would not be able to include indemnity agreements in professional services contracts between design professionals and public agencies that require the design professional to indemnify the agency for the agency's negligence or other actions by the agency. Design professionals can only indemnify for their own negligence,

recklessness, or intentionally wrongful conduct and the similar actions of those persons employed or utilized by them. Indemnity provisions that attempt to do otherwise are void.

The bill 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., to the definition of "design professionals."

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

The new requirements do not affect contracts entered into before the effective date of the bill.

Section 2 of the bill amends section 725.06, Florida Statutes, to remove architects and engineers from the list of persons covered under that section's restrictions on indemnity clauses in construction contracts.

Section 3 of the bill provides that the bill would become effective upon becoming law.

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

See Section II.C. Effect of Proposed Changes.

**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:**

Design professionals can no longer be required to indemnify other parties for the other parties' negligence.

D. FISCAL COMMENTS:

Entities or individuals 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 bill does not require a city or county to spend funds or to take any action requiring the expenditure of any 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:

On March 14, 2000, the Committee on Business Regulation & Consumer Affairs adopted an amendment to include land surveyors and mappers regulated by chapter 472, Florida Statutes, 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.

**STORAGE NAME:** h1083s1.jud

**DATE:** March 30, 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.