The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL:	SB 288
INTRODUCER:	Senator Negron
SUBJECT:	Design Professionals
DATE:	March 9, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Unfavorable**
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill limits the tort liability of licensed engineers, surveyors and mappers, architects, interior designers, and landscape architects (design professionals). It limits the potential tort claims for recovery of economic damages resulting from a construction defect that may be filed by a claimant contracting for the professional services of a design professional.

The tort liability limitation for design professionals does not apply if:

- The contract for professional services of the design professional requires professional liability insurance and the contracting party fails to maintain insurance coverage as specified in the contract;
- The claim relates to economic damages resulting from personal injury;
- The claim relates to damage to property that is not the subject of the contract;
- The contract or agreement was entered into before July 1, 2011 (the effective date of the bill); or
- The professional services were performed before July 1, 2011 (the effective date of the bill).

The bill provides an effective date of July 1, 2011.

This bill amends the following sections of the Florida Statutes: 471.023, 472.021, 481.219, and 481.319. The bill creates section 558.0035, Florida Statutes.

II. Present Situation:

Personal Liability for Professional Services

Section 621.07, F.S., provides for the personal liability of an officer, agent, member, manager, or employee of a corporation or limited liability company with regard to negligence, wrongful acts, or misconduct committed by that person while rendering professional services. It provides that the limited liability provided to professional service corporations and limited liability companies shall not:

> be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct; provided, however, that any officer, agent, member, manager, or employee of a corporation or limited liability company organized under this act shall be personally liable and accountable only for negligent or wrongful acts or misconduct committed by that person, or by any person under that person's direct supervision and control, while rendering professional service on behalf of the corporation or limited liability company to the person for whom such professional services were being rendered; and provided further that the personal liability of shareholders of a corporation, or members of a limited liability company, organized under this act, in their capacity as shareholders or members of such corporation or limited liability company, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under chapter 607 or a member-employee of a limited liability company organized under chapter 608. The corporation or limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, members, managers, or employees while they are engaged on behalf of the corporation or limited liability company in the rendering of professional services.

Engineers

Professional engineers are regulated by the Board of Professional Engineers within the Department of Business and Professional Regulation (department), which enforces and administers the provisions of ch. 471, F.S. Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an engineer:

- Graduating from an approved engineering curriculum of four years or more in a school, college, or university which has been approved by the board and has a record of four years of active engineering experience of a character indicating the competence to be in responsible charge of engineering;
- Graduating from an approved engineering technology curriculum of four years or more in a school, college, or university within the State University System, having been enrolled or having graduated prior to July 1, 1979, and having had a record of four years of active

engineering experience of a character indicating competence to be in responsible charge of engineering; or

- Having, in lieu of the education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering.[1]

Engineer Liability

Licensed engineers may practice through a business organization, including a partnership, corporation, or other legal entity offering professional services. Current law establishes the liability of engineers when practicing through a business organization, including the liability of partners in a partnership and of the business organization's officers, agents, or employees for negligence, misconduct, or wrongful acts.[2] Section 471.023(3), F.S., provides that the "fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her." With regard to the extent of a licensed engineer's liability for his or her own negligence, misconduct, or wrongful acts while employed by a business organization, s. 471.023(3), F.S., also provides that:

> any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control, while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.[3] A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.[4]

Surveyors and Mappers

Surveyors and mappers are regulated by the Board of Professional Surveyors and Mappers within the Department of Agriculture and Consumer Services, which enforces and administers the provisions of ch. 472, F.S.[5] Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as a surveyor and mapper:

- Receiving a degree in surveying and mapping of four years or more in a surveying and mapping degree program from a college or university recognized by the board and having

[1] Section 471.013(1), F.S.
[2] Section 471.023, F.S.
[3] Section 471.023(3), F.S.
[4] *Id.*
[5] The regulation of surveyors and mappers was transferred from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services by ch. 2009-66, L.O.F.

a specific experience record of four or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

- Being a graduate of a four-year course of study, other than in surveying and mapping, at an accredited college or university and having a specific experience record of six or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, five years of which are of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.[6]

Surveyors and Mappers Liability

Licensed surveyors and mappers may practice through a corporation or partnership. Current law establishes the liability of surveyors and mappers when practicing through a corporation or partnership.[7] "The fact that any registered surveyor and mapper practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him or her."[8]

In regard to the extent of a licensed mapper and surveyor's liability for his or her own negligence, misconduct, or wrongful acts while employed by a business organization, s. 472.021(3), F.S., also provides that:

> any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.[9] A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.[10]

Architects and Interior Designers

Architects are regulated by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation, which enforces and administers the provisions of part I of ch. 481, F.S. Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an architect:

[6] Section 472.013(2), F.S.
[7] Section 472.021(3), F.S.
[8] *Id*.
[9] *Id.*
[10] *Id*.

- Graduating from a school or college of architecture accredited by the National Architectural Accreditation Board, or from an approved architectural curriculum at an unaccredited school or college of architecture approved by the board; and
- Completing one year of the internship experience required by s. 481.211(1), F.S.[11]

Current law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an interior designer:

- Graduating from a board-approved interior design program of five years or more and completing one year of diversified interior design experience;
- Graduating from a board-approved interior design program of four years or more and completing two years of diversified interior design experience;
- Completing at least three years of a board-approved interior design curriculum and completing three years of diversified interior design experience; or
- Graduating from an interior design program of at least two years and completing four years of diversified interior design experience.[12]

Architects and Interior Designers Liability

Licensees may offer architecture and interior design services through a corporation, limited liability company, or partnership.[13] The corporation, limited liability company, or partnership shall not be relieved of responsibility for the conduct or acts of its agents, employees, or officers.[14]

With regard to the extent of a licensed architect's or interior designer's personal liability, s. 481.219(11), F.S., also provides that:

> the architect who signs and seals the construction documents and instruments of service shall be liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed.

Corporations, limited liability companies, and partnerships are not relieved of responsibility for the conduct or acts of their agents, employees, or officers.[15]

Landscape Architects

Landscape architects are regulated by the Board of Landscape Architecture within the Department of Business and Professional Regulation, which enforces and administers the provisions of part II of ch. 481, F.S. Existing law provides the following education and

[11] Section 481.209(1), F.S.
[12] Section 481.209(2), F.S.
[13] Section 481.219, F.S.
[14] Section 481.219(11), F.S.
[15] *Id.*

experience requirements for a person to qualify to take the examination for licensure as a landscape architect:

- Completing a board-approved professional degree program in landscape architecture; or
- Having six years of actual practical experience in landscape architectural work of a grade and character satisfactory to the board.[16]

Practicing landscape architecture through a corporation or partnership does not relieve any landscape architect from personal liability for his or her professional acts.[17]

Landscape Architects Liability

Licensees may offer landscape architect services through a corporation or partnership.[18] Section 481.319(6), F.S., provides that:

> the fact that registered landscape architects practice landscape architecture through a corporation or partnership as provided in this section shall not relieve any landscape architect from personal liability for his or her professional acts.

Design Professional Contracts

Florida law provides that a public agency:

> may require in a professional services contract with the design professional that the design professional indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract.[19]

Except as provided in s. 725.08(1), F.S., a professional services contract entered into with a public agency may not require that the design professional defend, indemnify, or hold harmless the agency, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding, and any such contract provision is void against the public policy of the state.[20] Section 725.08, F.S., does not apply to contracts or agreements entered into before May 25, 2000.[21]

Section 725.08(3), F.S., defines a "professional services contract" to mean:

[16] Section 481.309(1), F.S.
[17] Section 481.319(6), F.S.
[18] Section 481.319, F.S.
[19] Section 725.08(1), F.S.
[20] Section 725.08(2), F.S.
[21] Section 725.08(5), provides that this section does not affect contracts or agreements entered into before the effective date of this section. Section 725.08, F.S., was created in ch. 2000-162, Laws of Fla., which was approved by the Governor on May 25, 2000, and had an effective date of upon becoming law.

> a written or oral agreement relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement.

Section 725.08(4), F.S., defines a "design professional" to mean:

> an individual or entity licensed by the state who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture, under chapter 472 to practice land surveying and mapping, or under chapter 471 to practice engineering, and who enters into a professional services contract.

Economic Loss Rule

The economic loss rule is "a judicially created doctrine that sets forth the circumstances under which a tort action is prohibited if the only damages suffered are economic losses."[22] Under the economic loss rule, economic damages may not be recovered in a negligence action if the damages are not accompanied by physical property damage or bodily injury.[23] This rule "bars a plaintiff from bringing tort claims to recover pure economic damages arising from a breach of contract cause of action absent personal injury or property damages."[24] As a result, where the relationship between the plaintiff and the defendant is derived in contract, and the plaintiff cannot prove a tort independent of some contractual breach, the economic loss rule bars recovery on any noncontract claims.[25]

The Florida Supreme Court defined economic losses as "damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits, without any claim of personal injury or damage to other property."[26] An economic loss includes "disappointed economic expectations," i.e., the loss of the benefit of the bargain. Courts have found that such losses are more appropriately protected by contract law, rather than by tort law.[27] To recover damages under tort law, "there must be a showing of harm above and beyond disappointed expectations. A buyer's desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects."[28]

In Florida, the economic loss rule applies to claims in two different cases:

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[22] *Indemnity Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532, 536 (Fla. 2004).
[23] 17 FLA. JUR. 2D *Damages* s. 36 (2010).
[24] *Id*.
[25] *Id.*
[26] *Casa Clara Condominium Ass'n, Inc. v. Charley Toppino and Sons, Inc.*, 620 So. 2d 1244, 1246 (Fla. 1993) (quoting *Economic Loss in Products Liability Jurisprudence,* 66 COLUM. L. REV. 917, 918 (1966)).
[27] *Id.*
[28] *Id.* (quoting *Redarowicz v. Ohlendorf*, 441 N.E.2d 324, 327 (Ill. 1982)).

- When the parties are in contractual privity and one party seeks to recover damages in tort for matters actually arising in contract; and
- When there is a defect in a product that causes damage to the product but causes no personal injury or damage to other property.[29]

In *Casa Clara*, the Florida Supreme Court applied the economic loss rule to bar a negligence claim[30] by homeowners against a concrete supplier with whom the homeowners were not in privity. The court held that "[i]f a house causes economic disappointment by not meeting a purchaser's expectations, the resulting failure to receive the benefit of the bargain is a core concern of contract, not tort, law."[31] The court noted that there were other protections for homeowners, such as statutory warranties, the general warranty of habitability, the duty of sellers to disclose defects, the ability of purchasers to inspect houses for defects, and the homebuyers' power to bargain over price.[32]

The distinction between contract law and tort law is relevant to the remedies that can be attained. Tort law compensates people for personal injury or property damage caused by tortuous conduct, without regard to a contract. Contract law enforces expectancy interests created by an agreement between parties. Tort remedies may award plaintiffs greater damages and tort plaintiffs may be able to avoid the conditions of the contract,[33] while "contract principles [are] more appropriate than tort principles for resolving economic loss without an accompanying physical injury or property damage."[34]

Recognizing the different interests that tort and contract law are intended to protect, the Florida Supreme Court also stated in *Casa Clara* that:

> [t]his is the basic difference between contract law, which protects expectations, and tort law, which is determined by the duty owed to an injured party. For recovery in tort "there must be a showing of harm above and beyond disappointed expectations. A buyer's desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects."[35]

Economic Loss Rule and Design Professionals

In *Moransais v. Heathman*,[36] the Florida Supreme Court considered the application of the economic loss rule to a professional malpractice claim brought by a homeowner (plaintiff) against licensed engineers (defendants) who made a pre-purchase inspection and allegedly failed to detect and disclose defects in the condition of the house. The plaintiff had contracted with a

[29] *Auto-Owners Ins. Co. v. Ace Electrical Service, Inc.*, 648 F. Supp. 2d 1371, 1380-81 (M.D. Fla. 2009).
[30] *Casa Clara* at 1246. In this case, the condominium association's claims against the defendant included breach of common law implied warranty, products liability, negligence, and violation of the building code.
[31] *Id.* at 1247 (citing *East River Steamship Corp. v. Transamerica Delaval, Inc.* 476 U.S. 858, 870 (1986)).
[32] *Id.* at 1247.
[33] *Id.* at 1245 (citing William L. Prosser, *The Borderland of Tort and Contract in Selected Topics on the Law of Torts*, 380, 425 (1953)).
[34] *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So. 2d 899, 902 (Fla. 1987).
[35] *Casa Clara*, 620 So. 2d at 1246.
[36] *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999).

professional engineering corporation to perform the home inspection services, and the contract did not name the defendants who actually conducted the inspection as parties to the contract.

The court considered the following two questions:

- Where a purchaser of a home contracts with an engineering corporation, does the purchaser have a cause of action for professional malpractice against an employee of the engineering corporation who performed the engineering services?
- Does the economic loss rule bar a claim for professional malpractice against the individual engineer who performed the inspection of the residence where no personal injury or property damage resulted?

The court held that home purchasers have a cause of action for professional malpractice against an employee of the engineering corporation who conducts a home inspection but with whom the home purchaser is not in privity of contract. The court concluded that professional malpractice and negligence claims are not barred by the economic loss rule. The court's holding was based on two principal reasons:

- Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to the injured person.
- The economic loss rule is not intended to apply to professionals who negligently perform their duties.

The court stated that Florida's common law provides that persons who are:

> injured by another's negligence may maintain an action against the other person based on that other person's violation of a duty of due care to the injured person. Further, where the negligent party is a professional, the law imposes a duty to perform the requested services in accordance with the standard of care used by similar professionals in the community under similar circumstances.[37]

In addition to Florida's common law, the court relied on the two-year statute of limitations for professional malpractice in s. 95.11(4)(a), F.S. It also relied on s. 621.07, F.S., which provides that professional employees of a corporation may be held individually liable for any negligence committed while rendering professional services, to support its conclusion that the fact that both of the engineer defendants were employees of a corporation did not shield them from liability.

The court found that engineers were professionals within the meaning of s. 95.11, F.S., noting that a profession is "any vocation requiring at a minimum a four-year college degree before licensing is possible in Florida."[38] The court also noted that ss. 471.023 and 621.07, F.S., indicate an intent to hold licensed engineers as professionals in a corporation or partnership personally liable for their negligent acts.

[37] *Id.* at 975-76.
[38] *Id.* at 976 (citing *Garden v. Frier*, 602 So. 2d 1273, 1275 (Fla. 1992)).

Regarding the economic loss rule, the court noted that the rule has not eliminated causes of action premised upon torts that are independent of the contract.[39] It also held that the rule was not intended to bar well-established common law causes of action, such as those for neglect in providing professional services.[40] The court stated that the economic loss rule was primarily intended to limit product liability claims, and that it should generally be limited to that context "or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis."[41] Noting that actions against professionals often involve only economic loss without any personal or property damage, the court stated that extending the economic loss rule to tort cases against professionals "would effectively extinguish such causes of action."[42]

In *Witt v. La Gorce Country Club, Inc.*,[43] the Third District Court of Appeal relied on the holding in *Moransais* to reject the application of the economic loss rule to a professional malpractice claim against a licensed professional geologist. In *Witt*, the plaintiff, La Gorce Country Club, Inc., entered into a design-build contract for a reverse osmosis system with ITT Industries, Inc. (ITT), and Gerald M. Witt and Associates, Inc. (GMWA), which was the company of the defendant professional geologist Gerald M. Witt (Witt). The contract provided a limitation of liability, and Witt, in his individual capacity, was not a party to the contract. The reverse osmosis system ultimately failed after numerous technical problems during the design and building of the system, and the plaintiff filed suit.[44]

Regarding the malpractice claim against Witt, the Third District Court of Appeal refused to apply the economic loss rule to bar the claim. The court relied on the holding in *Moransais*, and also noted that, as a professional geologist, Witt was specifically subject to personal liability for negligence, misconduct, or wrongful acts under s. 492.111, F.S.
In refusing to apply the economic loss rule to limit Witt's liability, the court noted that:

> claims of professional negligence operate outside of the contract. Because a professional negligence claim exists and operates outside of a professional services contract, it would be inapposite to limit such a remedy to the confines of the very document outside of which it was intended to operate.[45]

[39] *Id.* at 981 (citing *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238 (Fla. 1996)).
[40] *Id.* at 983.
[41] *Id.*
[42] *Id.*
[43] *Witt v. La Gorce Country Club, Inc.*, 2009 WL 1606437 (Fla. 3d DCA 2009).
[44] The claims against Gerald M. Witt, the defendant professional geologist, and his codefendant corporations included: (1) fraud in the inducement against codefendant ITT Industries, Inc. (ITT); (2) aiding and abetting fraud in the inducement by Witt and his company Gerald M. Witt and Associates, Inc. (GMWA); (3) violation of the Florida Deceptive and Unfair Trade Practices Act in ss. 501.201-501.213, F.S., by ITT and GMWA; (4) professional malpractice by Witt and GMWA; and (5) breach of the contract by GMWA. *Witt* 2009 WL at 2.
[45] *Witt* at 4.

III. Effect of Proposed Changes:

The bill limits the tort liability of design professionals. The design professionals affected by the bill include licensed engineers, surveyors and mappers, architects, interior designers, and landscape architects.[46]

The bill limits the potential tort claims for recovery of economic damages resulting from a construction defect[47] that may be filed by a claimant[48] contracting for the professional services of a design professional. It eliminates causes of action in tort for any damages resulting from the performance of the professional services that are the subject of the contract. In effect, a claimant contracting directly with the design professional, or a claimant contracting with a general contractor or other entity for professional services to be performed by the design professional, is subject to this limitation of liability. The tort liability limitation in the bill does not apply to persons who are not a party to the contract for professional services.

The tort liability limitation for design professionals does not apply if:

- The contract requires professional liability insurance and the liability of the design professional is limited in the contract to an amount less than the liability insurance coverage required by the contract;
- The claim relates to economic damages resulting from personal injury;
- The claim relates to damage to property that is not the subject of the contract;
- The contract or agreement was entered into before July 1, 2011; or
- The professional services were performed before July 1, 2011.

The bill does not require insurance coverage as a condition for the limited liability. Any professional liability insurance coverage would be negotiated by the parties to the contract.

The effect of the bill's tort liability limitation is to apply the economic loss rule to bar claims by parties to a contract against the specified design professionals who provide the professional design services that are the subject of a contract. Therefore, a party claiming a purely economic loss based on a design service contract may not bring a tort action based on malpractice or

[46] "Design professional" is defined in s. 558.002(7), F.S.

[47] A "construction defect" is defined as a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to the cause of action;
- A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.

[48] A "claimant" is defined as "a property owner, including a subsequent purchaser or association, who asserts a claim for damages against a contractor, subcontractor, supplier, or design professional concerning a construction defect or a subsequent owner who asserts a claim for indemnification for such damages. The term does not include a contractor, subcontractor, supplier, or design professional."

negligence against the contracted design professional. The injured party would be limited to a lawsuit based on contract claims.

The tort liability limitation also applies whether or not the design professional rendered his services through a business organization, such as a corporation, partnership, or limited liability company. Under current law, engineers, surveyors and mappers, architects, interior designers, and landscape architects may provide their services through a business organization, such as a partnership or corporation, and the business organization must have a certificate of authorization issued by the respective board.[49]

The bill amends the current liability provisions in ss. 471.023(3), F.S. (engineers), 472.021(3), F.S. (surveyors and mappers), 481.219(11), F.S. (architects and interior designers), and 481.319(6), F.S. (landscape architects) to specifically reference the limitation of liability provision created in ch. 558, F.S., under the bill.

It is not clear what effect the liability limitation in the bill would have on the professional liability provisions amended by the bill and the liability provision in s. 621.07, F.S., and how these liability provisions could be applied against these professionals. However, as noted by the Supreme Court in *Moransais*, the extension of the economic loss rule against professionals for actions involving purely economic damages without personal injury or property damage, "would effectively extinguish such causes of action."[50]

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 21, Art. I, of the Florida Constitution provides the constitutional right of access to court. It provides:

> The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

[49] *See* s. 471.021, F.S., relating to engineers, s. 472.023, F.S., relating to surveyors and mappers, s. 481.219, F.S., relating to architects and interior designers, and s. 481.319, F.S., relating to landscape architects.
[50] *Moransais* at 983.

In *Johnson v. R. H. Donnelly Company*, the Florida Supreme Court held that the constitutional right of "access to courts guarantees the continuation of common law causes of action and those causes of action may be altered only if there is a reasonable substitution which protects the persons protected by the common law remedy."[51] In *Kluger v. White*, the Florida Supreme Court also held that the Legislature cannot abolish a common law cause of action "unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[52]

In *Moransais v. Heathman*,[53] the Florida Supreme Court stated that Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to injured persons. By limiting such claims against licensed engineers, surveyors and mappers, architects, and landscape architects, the bill may implicate concerns relating to the constitutional right of access to courts to the extent that the bill limits causes of actions for professional negligence and professional malpractice.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits the tort claims for economic losses that are based upon professional negligence and professional malpractice against licensed engineers, surveyors and mappers, architects, and landscape architects (design professionals). The design professionals affected by the bill may experience lower costs for professional liability insurance and may charge lower prices to their customers for their professional services.

Parties to a contract who experience an economic loss that may be attributable to the professional negligence or professional malpractice of a design professional may be limited to the limited remedies available under contract law or may be barred completely from any recovery of damages contingent upon the terms of the contract.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

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[51] *Johnson v. R. H. Donnelly Co.*, 402 So. 2d 518, 520 (Fla. 1981).
[52] *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).
[53] *Moransais v. Heathman*, 744 So. 2d 973, 975, 976 (Fla. 1999).

VII. Related Issues:

The provisions of this bill are substantially similar to the provisions of CS/CS/SB 288 by the Judiciary Committee, the Regulated Industries Committee, and Senator Negron, which passed in the 2010 Regular Session and was vetoed by Governor Charlie Crist.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.