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## Judiciary Committee

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### EHB 1559

**Title:** An act relating to indemnification agreements involving design professionals.

**Brief Description:** Limiting indemnification agreements involving design professionals.

**Sponsors:** Representatives Haigh, Dammeier and Goodman.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Limits the enforceability of indemnification agreements between public agencies and design professionals to the negligence, recklessness, or willful misconduct of design professionals.</li></ul>
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**Hearing Date:** 1/9/12

**Staff:** Edie Adams (786-7180).

**Background:**

Indemnity provisions in contracts require one party (the indemnitor) to pay the other party (the indemnitee) for any losses the indemnitee may suffer during performance of a contract.

Currently, the law limits the enforcement of indemnification clauses in contracts relating to construction, maintenance, or other work on any structure, project, development, or improvement attached to real estate. In these contracts, a clause that indemnifies against liability for damages caused by or resulting from the sole negligence of the indemnitee is void. A clause that indemnifies against liability for damages caused by or resulting from the concurrent negligence of the indemnitee and indemnitor is enforceable only to the extent the indemnitor is negligent and only if specifically and expressly provided for in the agreement.

In 2010, legislation was enacted that added motor carrier transportation contracts to the types of contracts for which indemnification is enforceable only to the extent of the indemnitor's negligence.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Summary of Bill:**

Limitations are placed on the enforceability of indemnification agreements between agencies and architects, landscape architects, engineers, or land surveyors (design professionals). "Agency" means state and local agencies and special districts.

A contract term requiring a design professional to indemnify an agency for claims against the agency, including the duty and cost to defend, is enforceable only with respect to the negligence, recklessness, or willful misconduct of the design professional. A design professional does not bear the responsibility of paying for the costs of damages resulting from a third party's actions that are not connected with the design professional. The restrictions on the enforceability of indemnification agreements relating to construction contracts and design professionals cannot be waived or modified by contractual agreement apart from the exemption permitted under current law relating to the Industrial Insurance Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.