

SENATE BILL REPORT

SHB 1559

As of February 17, 2012

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

Brief Description: Limiting indemnification agreements involving design professionals.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Haigh, Dammeier and Goodman).

Brief History: Passed House: 2/14/12, 98-0.

Committee Activity: Labor, Commerce & Consumer Protection: 2/20/12.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Mac Nicholson (786-7445)

Background: Indemnity provisions in contracts require one party (the indemnitor) to reimburse or compensate the other party (the indemnitee) for expenditures paid to a third party for injuries resulting from a violation of a common-law duty. Indemnity provisions also may impose a duty on the indemnitor to defend the indemnitee in any action brought against the indemnitee.

Currently, state 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 arising out of bodily injury or damage to property 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 of the indemnitor's negligence and only if specifically and expressly provided for in the agreement.

The term agency as used in contracts for architectural and engineering services means both state and local agencies and special districts.

Summary of Bill: The duty and cost to defend is considered part of an indemnity agreement subject to enforceability restrictions in construction-related contracts.

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.

The enforceability of indemnification agreements between public agencies and architectural, landscape architectural, engineering, or land surveying services is limited.

A contract term requiring an architect, landscape architect, engineer, or land surveyor to indemnify a public agency for claims against the agency, including the duty and cost to defend, is enforceable only to the extent of the negligence, recklessness, or willful misconduct of the architect, landscape architect, engineer, or land surveyor. The legislation does not limit the liability of the architect, landscape architect, engineer, or land surveyor, for patent or copyright claims that arise from the performance of professional services.

The restrictions on 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 indemnitor's immunity the Industrial Insurance Act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.