

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1996

SPONSOR: Committee on Regulated Industries and Senator Clary

SUBJECT: Design Professional Contracts

DATE: March 29, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wimsett</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates a provision that limits the types of indemnity agreements in contracts with design professionals.

This bill creates s 725.08, F.S. and amends s. 725.06, F.S.

II. Present Situation:

Chapter 725, F.S., governs unenforceable contracts. Section 725.06, F.S., deals with construction contracts and prohibits indemnification provisions that shield a party from liability for damages caused by that party’s own act, omission, or default arising from the contract 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. Construction contracts are not distinguished from design services contracts under s. 725.06, F.S. Therefore, a design services contract that contains either curative provision will be deemed enforceable.

When dealing with public clients, design professionals typically compete for work pursuant to the provisions of the Consultants’ Competitive Negotiation Act, which sets out a detailed selection process. *See*, s. 287.055, F.S. The selection process is often time consuming and expensive. A public client’s insistence that the design professional indemnify the public client for the public client’s own negligence, accompanied by either a monetary limit on indemnification or the provision of specific consideration under s. 725.06, F.S., may force the design professional to either accept a potentially onerous and expensive burden or lose the contract. Furthermore, design professionals are claiming that, even if they are willing to assume liability under the terms of a broad indemnification provision, insurance coverage may be either prohibitively expensive or impossible to obtain.

III. Effect of Proposed Changes:

The bill creates s. 725.08, F.S., in the unenforceable contracts chapter, to provide limitations on the use of indemnification clauses in contracts with design professionals. Subsection (1) provides

that a “public agency” client may require, in a “professional services contract,” that a “design professional” indemnify the public agency for liability, damages, losses and costs caused by the negligence, recklessness, or intentional wrongful conduct of the design professional or individuals under the design professional’s control. Accordingly, public agencies will no longer be able to require a design professional to indemnify the public agency for the public agency’s own negligent, reckless, or intentional acts.

The term “public agency” is not defined. However, s. 287.055, F.S., which applies to public procurement of services performed by design professionals, defines agency in subsection (2)(b) as “...the state, a state agency, a municipality, a political subdivision, a school district, or a school board.” Section 1.01(8), F.S., defines a political subdivision as including “... counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.”

Subsection (2) of s. 725.08, F.S., provides that, except as specifically provided in subsection (1), a professional services contract may not require the design professional to defend, indemnify, or hold harmless any client, its employees, officers, directors or agents. Under this provision, design professionals will not have to contractually indemnify or defend any client for actions arising from the client’s own negligent, reckless, or intentional acts. Additionally, design professionals will not have to contractually indemnify any non-public agency client for actions arising from the design professionals’ negligent, reckless, or intentional acts. This subsection declares that any such contract provision to the contrary will be void as against public policy.

A “professional services contract” is defined in subsection (3) as:

a written or oral agreement relating to planning, design, construction, administration, study, 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 improvement.

A “design professional” is defined in subsection (4) as a person or entity licensed by the state who holds a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture, under Chapter 472, F.S., to practice land surveying and mapping, or under Chapter 471, F.S., to practice engineering.

The bill provides in subsection (5) that contracts or agreements entered into before July 1, 2000 will not be affected.

The bill amends s. 725.06, F.S., to remove architects and engineers from indemnity provisions relating to construction contracts.

The bill provides an effective date of July 1, 2000.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may stimulate competition for contracts with public clients by eliminating indemnification options that may have chilled participation. The bill also should result in reduced insurance expenses for design professionals. The bill will impact parties to a civil action stemming from design professionals contracts.

C. Government Sector Impact:

Public agencies that have benefited from broad indemnification provisions in contracts with design professionals will no longer be able to rely on those provisions as a shield to liability. Depending on the incidences of public agency negligence, recklessness or intentional wrongdoing in the performance of design professional contracts, this bill may increase the number of damage claims against public agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.