

BILL ANALYSIS

H.B. 2049
By: Darby
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, governmental agencies are prevented from requiring certain design professionals to indemnify or defend the agency for any liability other than that caused by or resulting from negligent acts, intentional torts, failure to pay subcontractors, or infringement of intellectual property. Interested parties claim that many agencies are requiring these professionals to defend the agency upon a mere allegation of negligence by the professional and that these types of contractual provisions in a professional services contract are typically uninsurable under a professional liability insurance policy. H.B. 2049 seeks to amend current law to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2049 amends the Local Government Code to prohibit an indemnification covenant or promise in a contract for engineering or architectural services to which a governmental agency is a party from providing for a duty to defend but authorizes the covenant or promise to provide that the governmental agency may seek the reimbursement of reasonable attorney's fees after a final adjudication of liability due to damage that is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

H.B. 2049 requires a contract for engineering or architectural services to which a governmental agency is a party to require a licensed engineer or registered architect to perform services with the professional skill and care ordinarily provided by engineers or architects practicing in the same or similar locality and under the same or similar circumstances and as expeditiously as is prudent considering the ordinary professional skill and care of an engineer or architect and the orderly progress of the project. The bill makes a provision in such a contract establishing a different standard of care void and unenforceable.

EFFECTIVE DATE

September 1, 2015.