

BILL ANALYSIS

Senate Research Center

H.B. 3021
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2049, passed by the 84th Legislature, prevents certain governmental agencies from requiring design professionals to defend those agencies against claims based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency. H.B. 2049 requires that certain governmental agencies' contracts require design professionals to perform services consistent with the professional skill and care ordinarily provided by similarly situated professionals. The statute is not applicable to state agencies.

In the time since the passage of H.B. 2049, state agencies have begun to insert uninsurable duty to defend clauses and uninsurable standard of care clauses that fall outside the long-standing standard of care defined in common law.

H.B. 3021 makes the same indemnification, duty to defend, and standard of care provisions that are applicable to most governmental agencies applicable to state agencies as well.

H.B. 3021 amends current law relating to indemnification and duties of engineers and architects under certain governmental contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2254.0031, Government Code, as follows:

Sec. 2254.0031. INDEMNIFICATION. (a) Creates this subsection from existing text. Prohibits a state governmental entity from requiring a contractor to indemnify, hold harmless, or defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees. Makes a nonsubstantive change.

(b) Provides that, notwithstanding any other provision of law, Sections 271.904(a) (relating to a certain covenant, in connection with a certain contract for engineering or architectural services to which a governmental agency is a party) through (e) (relating to a provision establishing a different standard of care in a contract for engineering or architectural services to which a governmental agency is a party) and (g), Local Government Code, apply to a contract for architectural or engineering services between an architect or engineer selected under this subchapter (Professional Services) and a state agency as defined by Section 2052.101 (Definition).

SECTION 2. Amends Section 271.904, Local Government Code, by amending Subsection (d) and adding Subsection (g), as follows:

(d) 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 competent engineers or architects practicing under the same or similar circumstances and professional license, rather than practicing in the same or similar locality under the same or similar circumstances and professional license.

(g) Provides that nothing in this section (Engineering or Architectural Services Contracts: Indemnification Limitations; Duties of Engineer or Architect) prohibits a governmental agency in a contract for engineering or architectural services to which the governmental agency is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

SECTION 3. Makes application of Section 2254.0031, Government Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2017.