

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0706.01 Jerry Barry x4341

HOUSE BILL 15-1197

HOUSE SPONSORSHIP

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SENATE SPONSORSHIP

Jahn,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON INDEMNITY OBLIGATIONS IN PUBLIC**
102 **CONSTRUCTION CONTRACTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Currently, public entities in construction-related contracts are prohibited from being indemnified for the public entity's own negligence. The bill clarifies this provision by specifying that:

- ! It also applies to a design contract and to an obligation to pay for the defense of the public entity;
- ! The contractor's obligation is limited to the amount of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

negligence attributable to the contractor and its agents, representatives, subcontractors, and suppliers; and
! The obligation only arises when the amount of its liability for the losses of the third party are adjudicated.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 13-50.5-102, **amend**
3 (8) as follows:

4 **13-50.5-102. Right to contribution - contract or agreement**
5 **provision to indemnify or hold harmless void against public policy.**

6 (8) (a) ~~In the event that a~~ ANY public contract or agreement for ~~the~~
7 ARCHITECTURAL, ENGINEERING, OR SURVEYING SERVICES; DESIGN;
8 construction; alteration; repair; or maintenance of any building, structure,
9 highway, bridge, viaduct, water, sewer, or gas distribution system, or
10 other works dealing with construction, or any moving, demolition, or
11 excavation connected with such construction THAT contains ~~any~~ A
12 covenant, promise, agreement, or combination thereof to DEFEND,
13 indemnify, or hold harmless any public entity IS ENFORCEABLE ONLY TO
14 THE EXTENT AND FOR AN AMOUNT REPRESENTED BY THE DEGREE OR
15 PERCENTAGE OF NEGLIGENCE OR FAULT ATTRIBUTABLE TO THE
16 INDEMNITY OBLIGOR OR THE INDEMNITY OBLIGOR'S AGENTS,
17 REPRESENTATIVES, SUBCONTRACTORS, OR SUPPLIERS. ANY SUCH
18 COVENANT, PROMISE, AGREEMENT, OR COMBINATION THEREOF REQUIRING
19 AN INDEMNITY OBLIGOR TO DEFEND, INDEMNIFY, OR HOLD HARMLESS ANY
20 PUBLIC ENTITY ~~from that public entity's own negligence then such~~
21 ~~covenant, promise, agreement, or combination thereof is void as against~~
22 ~~public policy and wholly unenforceable.~~

23 (b) This subsection (8) shall not apply to construction bonds,

1 contracts of insurance, OR INSURANCE POLICIES THAT PROVIDE FOR THE
2 DEFENSE, INDEMNIFICATION, OR HOLDING HARMLESS OF PUBLIC ENTITIES.
3 OR contract clauses regarding insurance. ~~or contract clauses regarding~~
4 ~~costs of defense of litigation arising out of the work or to any covenant,~~
5 ~~promise, agreement, or combination thereof to indemnify or hold~~
6 ~~harmless a contracting party against claims arising out of the negligent~~
7 ~~acts of the indemnitor and its subcontractors in the performance of the~~
8 ~~work under the contract. However, no contracting party shall be required~~
9 ~~to indemnify or hold harmless from any liability or damages arising from~~
10 ~~the negligent acts of the indemnified party.~~ This subsection (8) is intended
11 only to affect the contractual relationship between the parties relating to
12 THE DEFENSE, indemnification, AND HOLDING HARMLESS of public
13 entities, ~~for the negligent acts of the public entity,~~ and nothing in this
14 subsection (8) shall affect any other rights or remedies of public entities
15 or contracting parties.

16 (c) THE EXTENT OF AN INDEMNITY OBLIGOR'S OBLIGATION TO
17 DEFEND, INDEMNIFY, OR HOLD HARMLESS AN INDEMNITY OBLIGEE MAY BE
18 DETERMINED ONLY AFTER THE INDEMNITY OBLIGOR'S LIABILITY OR FAULT
19 TO THE THIRD PARTY HAS BEEN DETERMINED BY ADJUDICATION OR BY
20 ALTERNATIVE DISPUTE RESOLUTION BETWEEN THE INDEMNITY OBLIGOR
21 AND OBLIGEE.

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect September 1, 2015; except that,
24 if a referendum petition is filed pursuant to section 1 (3) of article V of
25 the state constitution against this act or an item, section, or part of this act
26 within the ninety-day period after final adjournment of the general
27 assembly, then the act, item, section, or part will not take effect unless

1 approved by the people at the general election to be held in November
2 2016 and, in such case, will take effect on the date of the official
3 declaration of the vote thereon by the governor.

4 (2) This act applies to contracts or agreements entered into on or
5 after the applicable effective date of this act.