

Drafting Number:	LLS 15-0706	Date:	February 23, 2015
Prime Sponsor(s):	Rep. Tate	Bill Status:	House Judiciary
	Sen. Jahn	Fiscal Analyst:	Erin Reynolds (303-866-4146)

# BILL TOPIC: INDEMNITY IN PUBLIC CONSTRUCTION CONTRACTS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017		
State Revenue				
State Expenditures				
FTE Position Change				
Appropriation Required: None.				

\* This summary shows changes from current law under the bill for each fiscal year.

# Summary of Legislation

The bill clarifies the manner in which indemnification clauses may be used in construction-related contracts for public entities. Any construction-related service contract, including a design contract, that holds harmless a public entity is enforceable only to the extent of the negligence of the contractor and its agents, representatives, subcontractors, and suppliers. A contract that requires a contractor to hold harmless a public entity against the public entity's own negligence is unenforceable. The contractor's obligation is limited to the amount of negligence attributable to them and only arises when their liability for any losses to a third party have been determined by a court.

## Background

The Office of the State Architect (OSA) in the Department of Personnel and Administration (DPA) provides guidance, training, and assistance to state agencies on capital construction projects, controlled maintenance projects, code and energy management policies, and real estate transactions. As such, the OSA provides state agencies with standard contract language, including standard language for construction-related contracts. According to the DPA, these standard contracts were developed in coordination with professional associations, the Office of the State Controller, the Governor's Office, the Attorney General's Office, and the State Office of Risk Management within the DPA, and are reviewed and updated regularly. This standard language includes a provision that contractors are not responsible to hold the state harmless for the state's negligence. It is common practice for the Attorney General's Office to defend the state in a lawsuit involving a governmental construction contract, and collect any costs incurred afterward from the contractor. Given the state's current alignment with the intent of the bill, the bill is expected to have only a local government impact.

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## Local Government Impact

Because the bill shifts the burden to defend certain construction lawsuits to the local government, those affected will be required to incur related legal costs.

### Effective Date

The bill takes effect September 1, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed. It applies to contracts or agreements entered into on or after this date.

### **State and Local Government Contacts**

Cities and Counties Higher Education Local Affairs Public Safety State Corrections Judicial Military Affairs Regulatory Agencies Transportation Governor's Office Law Personnel Revenue