

Chapter 757

H.B. No. 2049

1 AN ACT

2 relating to indemnification and duties of engineers and architects
3 under certain governmental contracts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 271.904, Local Government Code, is
6 amended to read as follows:

7 Sec. 271.904. ENGINEERING OR ARCHITECTURAL SERVICES
8 CONTRACTS: INDEMNIFICATION LIMITATIONS; DUTIES OF ENGINEER OR
9 ARCHITECT. (a) A covenant or promise in, in connection with, or
10 collateral to a contract for engineering or architectural services
11 to which a governmental agency is a party is void and unenforceable
12 if the covenant or promise provides that a licensed engineer or
13 registered architect whose work product is the subject of the
14 contract must indemnify or[~~r~~] hold harmless[~~, or defend~~] the
15 governmental agency against liability for damage, other than
16 liability for damage to the extent that the damage is caused by or
17 results from an act of negligence, intentional tort, intellectual
18 property infringement, or failure to pay a subcontractor or
19 supplier committed by the indemnitor or the indemnitor's agent,
20 consultant under contract, or another entity over which the
21 indemnitor exercises control.

22 (b) Except as provided by Subsection (c), a covenant or
23 promise in, in connection with, or collateral to a contract for
24 engineering or architectural services to which a governmental

1 agency is a party is void and unenforceable if the covenant or
2 promise provides that a licensed engineer or registered architect
3 whose work product is the subject of the contract must defend a
4 party, including a third party, against a claim based wholly or
5 partly on the negligence of, fault of, or breach of contract by the
6 governmental agency, the agency's agent, the agency's employee, or
7 other entity, excluding the engineer or architect or that person's
8 agent, employee, or subconsultant, over which the governmental
9 agency exercises control. A covenant or promise may provide for the
10 reimbursement of a governmental agency's reasonable attorney's fees
11 in proportion to the engineer's or architect's liability.

12 (c) Notwithstanding Subsection (b), a governmental agency
13 may require in a contract for engineering or architectural services
14 to which the governmental agency is a party that the engineer or
15 architect name the governmental agency as an additional insured
16 under the engineer's or architect's general liability insurance
17 policy and provide any defense provided by the policy.

18 (d) A contract for engineering or architectural services to
19 which a governmental agency is a party must require a licensed
20 engineer or registered architect to perform services:

21 (1) with the professional skill and care ordinarily
22 provided by competent engineers or architects practicing in the
23 same or similar locality and under the same or similar
24 circumstances and professional license; and

25 (2) as expeditiously as is prudent considering the
26 ordinary professional skill and care of a competent engineer or
27 architect.

1 (e) In a contract for engineering or architectural services
2 to which a governmental agency is a party, a provision establishing
3 a different standard of care than a standard described by
4 Subsection (d) is void and unenforceable. If a contract contains a
5 void and unenforceable provision, the standard of care described by
6 Subsection (d) applies.

7 (f) In this section, "governmental agency" has the meaning
8 assigned by Section 271.003.

9 SECTION 2. Section 271.904, Local Government Code, as
10 amended by this Act, applies only to a contract for which a request
11 for proposals or a request for qualifications is first published or
12 distributed on or after the effective date of this Act. A contract
13 for which a request for proposals or a request for qualifications is
14 first published or distributed before the effective date of this
15 Act is governed by the law in effect on the date the request was
16 published or distributed, and the former law is continued in effect
17 for that purpose.

18 SECTION 3. This Act takes effect September 1, 2015.

Jan P. Robert

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 2049 was passed by the House on May 4, 2015, by the following vote: Yeas 131, Nays 7, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2049 on May 26, 2015, by the following vote: Yeas 143, Nays 1, 3 present, not voting.

Robert Hanes

Chief Clerk of the House

I certify that H.B. No. 2049 was passed by the Senate, with amendments, on May 22, 2015, by the following vote: Yeas 26, Nays 5.

Patsy Spaw

Secretary of the Senate

APPROVED: 6-13-2015

Date

Betsy Abbott

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
4:09 pm O'CLOCK

JUN 17 2015

Quill

Secretary of State

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 23, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2049 by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Local Government Code to specify a covenant in connection with a contract for certain services, which a governmental agency is a party, is void if the covenant provides that a licensed individual must defend a party over certain claims. The bill would permit certain governmental contracts for architectural or engineering services to include reimbursement of a governmental agency's attorney's fees and include the governmental entity as an additional insured under the engineer's or architect's liability insurance policy. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, CL, SD, EK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 15, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB2049** by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Local Government Code to specify a covenant in connection with a contract for certain services, which a governmental agency is a party, is void if the covenant provides that a licensed individual must defend a party over certain claims. The bill would permit certain governmental contracts for architectural or engineering services to include reimbursement of a governmental agency's attorney's fees and include the governmental entity as an additional insured under the engineer's or architect's liability insurance policy. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

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Local Government Impact

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, CL, SD, EK

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 5, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2049 by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Local Government Code to specify certain governmental contracts with architects or engineers that contain indemnification clauses may not include a duty to defend but may include the governmental agency to seek reimbursement for attorney fees after a final adjudication. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

Local Government Impact

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, CL, SD, EK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION
Revision 1

April 10, 2015

TO: Honorable Wayne Smith, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2049 by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Local Government Code to specify certain governmental contracts with architects or engineers that contain indemnification clauses may not include a duty to defend but may include the governmental agency to seek reimbursement for attorney fees after a final adjudication. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, CL, SD, EK

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

March 29, 2015

TO: Honorable Wayne Smith, Chair, House Committee on Licensing & Administrative Procedures

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2049 by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Local Government Code to specify certain governmental contracts with architects or engineers that contain indemnification clause may not provide include a duty to defend but may include the governmental agency to seek reimbursement for attorney fees after a final adjudication. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

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LBB Staff: UP, CL, SD, EK