

INDEMNIFICATION FOR DESIGN

PROFESSIONAL SERVICES

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: _____

LONG TITLE

General Description:

This bill forbids certain indemnification provisions in contracts entered into using public funds by a state agency.

Highlighted Provisions:

This bill:

- ▶ defines "design professional" to include certain architects, engineers, and surveyors;
- ▶ forbids a design professional from indemnifying any other party to a contract entered into by a state agency;
- ▶ provides exceptions for a design professional's negligence, recklessness, or willful misconduct; and
- ▶ prohibits waiving the indemnification prohibition by contract.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-6-107, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:



28 63A-5-223, Utah Code Annotated 1953

29 63G-6-603, Utah Code Annotated 1953



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section 63A-5-223 is enacted to read:

33 **63A-5-223. Contracts -- Certain indemnification provisions forbidden.**

34 (1) As used in this section, "design professional" means:

35 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

36 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects

37 Licensing Act; and

38 (c) a professional engineer or professional land surveyor, licensed under Title 58,

39 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

40 (2) Beginning May 12, 2009, a contract, including an amendment to an existing
41 contract, entered into under authority of this chapter may not require that a design professional
42 indemnify any other party to the contract from liability claims that arise out of the design
43 professional's services, unless the liability claim arises from the design professional's
44 negligence, recklessness, or wilful misconduct.

45 (3) Subsection (2) may not be waived by contract.

46 Section 2. Section 63G-6-603 is enacted to read:

47 **63G-6-603. Contracts -- Certain indemnification provisions forbidden.**

48 (1) As used in this section, "design professional" means:

49 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

50 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects

51 Licensing Act; and

52 (c) a professional engineer or professional land surveyor, licensed under Title 58,

53 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

54 (2) After May 12, 2009, a contract, including an amendment to an existing contract,
55 entered into by a state agency may not require that a design professional indemnify any other
56 party to the contract against liability claims against the other party arising out of the design
57 professional's services, unless the liability claim arises from the design professional's
58 negligence, recklessness, or wilful misconduct.

59 (3) Subsection (2) may not be waived by contract.

60 Section 3. Section **72-6-107** is amended to read:

61 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**
62 **Certain indemnification provisions forbidden.**

63 (1) As used in this section, "design professional" means:

64 (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

65 (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects
66 Licensing Act; and

67 (c) a professional engineer or professional land surveyor, licensed under Title 58,
68 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

69 ~~[(+)]~~ (2) (a) The department shall make plans, specifications, and estimates prior to the
70 construction or improvement of any state highway.

71 (b) Except as provided in Section 63G-6-502 and except for construction or
72 improvements performed with state prison labor, a construction or improvement project with
73 an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials
74 shall be performed under contract awarded to the lowest responsible bidder.

75 (c) The advertisement for bids shall be published in a newspaper of general circulation
76 in the county in which the work is to be performed, at least once a week for two consecutive
77 weeks, with the last publication at least ten days before bids are opened.

78 (d) The department shall receive sealed bids and open the bids at the time and place
79 designated in the advertisement. The department may then award the contract but may reject
80 any and all bids.

81 (e) If the department's estimates are substantially lower than any responsible bid
82 received, the department may perform any work by force account.

83 ~~[(2)]~~ (3) If any payment on a contract with a private contractor for construction or
84 improvement of a state highway is retained or withheld, the payment shall be retained or
85 withheld and released as provided in Section 13-8-5.

86 ~~[(3)]~~ (4) If the department performs a construction or improvement project by force
87 account, the department shall:

88 (a) provide an accounting of the costs and expenditures of the improvement including
89 material and labor;

90 (b) disclose the costs and expenditures to any person upon request and allow the person
91 to make a copy and pay for the actual cost of the copy; and

92 (c) perform the work using the same specifications and standards that would apply to a
93 private contractor.

94 [~~4~~] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
95 Act, the department shall establish procedures for:

96 (a) hearing evidence that a region within the department violated this section; and

97 (b) administering sanctions against the region if the region is found in violation.

98 (6) After May 12, 2009, a contract, including an amendment to an existing contract,
99 entered into by the department may not require that a design professional indemnify any other
100 party to the contract against liability claims against the other party arising out of the design
101 professional's services, unless the liability claim arises from the design professional's
102 negligence, recklessness, or wilful misconduct.

103 (7) Subsection (6) may not be waived by contract.

Legislative Review Note
as of 1-27-09 10:46 AM

Office of Legislative Research and General Counsel

S.B. 124 - Indemnification for Design Professional Services

**Revised
Fiscal Note**

2009 General Session
State of Utah

State Impact

Enactment of this bill will require the Department of Transportation (UDOT) and the Division of Facilities, Construction, and Management (DFCM) to purchase insurance from the market at 75 cents per \$1,000 of projects under contract to cover liabilities resulting from errors in design. Currently UDOT has \$1.7 billion of projects under contract and DFCM has \$820 million.

	<u>2009 Approp.</u>	<u>2010 Approp.</u>	<u>2011 Approp.</u>	<u>2009 Revenue</u>	<u>2010 Revenue</u>	<u>2011 Revenue</u>
General Fund	\$0	\$1,890,000	\$1,890,000	\$0	\$0	\$0
Total	\$0	\$1,890,000	\$1,890,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments, though certain individuals and businesses may benefit from reduced insurance costs.