

**Senator Gregory S. Bell** proposes the following substitute bill:

**INDEMNIFICATION FOR DESIGN**

**PROFESSIONAL SERVICES**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gregory S. Bell**

House Sponsor: Lorie D. Fowlke

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**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 certain parties to a contract entered into by a state agency;
- ▶ provides exceptions for:
  - a design professional's negligence, wrongful conduct, or certain other conduct;
- and
  - indemnification of others under the design professional's control; and
- ▶ prohibits waiving the indemnification prohibition by contract.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **72-6-107**, as last amended by Laws of Utah 2008, Chapter 382

29 ENACTS:

30 **63A-5-223**, Utah Code Annotated 1953

31 **63G-6-603**, Utah Code Annotated 1953

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

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

35 **63A-5-223. Contracts -- Certain indemnification provisions forbidden.**

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

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

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

39 Licensing Act; and

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

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

42 (2) (a) Beginning May 12, 2009, a contract, including an amendment to an existing  
43 contract, entered into under authority of this chapter may not require that a design professional  
44 indemnify another from liability claims that arise out of the design professional's services,  
45 unless the liability claim arises from the design professional's negligent act, wrongful act, error  
46 or omission, or other liability imposed by law.

47 (b) Subsection (2)(a) may not be waived by contract.

48 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
49 to indemnify a person for whom the design professional has direct or indirect control or  
50 responsibility.

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

52 **63G-6-603. Contracts -- Certain indemnification provisions forbidden.**

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

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

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

56 Licensing Act; and

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

59 (2) (a) Beginning May 12, 2009, a contract, including an amendment to an existing  
60 contract, entered into under authority of this chapter may not require that a design professional  
61 indemnify another from liability claims that arise out of the design professional's services,  
62 unless the liability claim arises from the design professional's negligent act, wrongful act, error  
63 or omission, or other liability imposed by law.

64 (b) Subsection (2)(a) may not be waived by contract.

65 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
66 to indemnify a person for whom the design professional has direct or indirect control or  
67 responsibility.

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

69 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage --**  
70 **Certain indemnification provisions forbidden.**

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

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

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

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

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

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

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

86 (d) The department shall receive sealed bids and open the bids at the time and place  
87 designated in the advertisement. The department may then award the contract but may reject

88 any and all bids.

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

91 [~~(2)~~] (3) If any payment on a contract with a private contractor for construction or  
92 improvement of a state highway is retained or withheld, the payment shall be retained or  
93 withheld and released as provided in Section 13-8-5.

94 [~~(3)~~] (4) If the department performs a construction or improvement project by force  
95 account, the department shall:

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

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

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

102 [~~(4)~~] (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
103 Act, the department shall establish procedures for:

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

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

106 (6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing  
107 contract, entered into under authority of this chapter may not require that a design professional  
108 indemnify another from liability claims that arise out of the design professional's services,  
109 unless the liability claim arises from the design professional's negligent act, wrongful act, error  
110 or omission, or other liability imposed by law.

111 (b) Subsection (2)(a) may not be waived by contract.

112 (c) Notwithstanding Subsections (2)(a) and (b), a design professional may be required  
113 to indemnify a person for whom the design professional has direct or indirect control or  
114 responsibility.

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**S.B. 124 2nd Sub. (Salmon) - Indemnification for Design Professional Services**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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