

By: Eltife

S.B. No. 799

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(b) If a contract for engineering or architectural services
to which a governmental agency is a party contains an
indemnification covenant or promise authorized under Subsection

1 (a), the covenant or promise may not provide for a duty to defend
2 but may provide that the governmental agency may seek the
3 reimbursement of reasonable attorney's fees after a final
4 adjudication of liability due to an act described by Subsection
5 (a).

6 (c) A contract for engineering or architectural services to
7 which a governmental agency is a party must require a licensed
8 engineer or registered architect to perform services:

9 (1) with the professional skill and care ordinarily
10 provided by engineers or architects practicing in the same or
11 similar locality and under the same or similar circumstances; and

12 (2) as expeditiously as is prudent considering the
13 ordinary professional skill and care of an engineer or architect
14 and the orderly progress of the project.

15 (d) In a contract for engineering or architectural services
16 to which a governmental agency is a party, a provision establishing
17 a different standard of care than a standard described by
18 Subsection (c) is void and unenforceable.

19 (e) In this section, "governmental agency" has the meaning
20 assigned by Section 271.003.

21 SECTION 2. Section 271.904, Local Government Code, as
22 amended by this Act, applies only to a contract for which a request
23 for proposals or a request for qualifications is first published or
24 distributed on or after the effective date of this Act. A contract
25 for which a request for proposals or a request for qualifications is
26 first published or distributed before the effective date of this
27 Act is governed by the law in effect on the date the request was

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1 published or distributed, and the former law is continued in effect
2 for that purpose.

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