

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 or ~~or~~ 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) Except as provided by Subsection (c), a covenant or
promise in, in connection with, or collateral to a contract for
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.

H.B. No. 2049

President of the Senate

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.

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.

Secretary of the Senate

APPROVED: _____

Date

Governor