1-1 By: Duncan   S.B. No. 555
1-2   (In the Senate - Filed January 27, 2009; February 23, 2009,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 13, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 1; March 13, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 555   By: Duncan

1-8   A BILL TO BE ENTITLED
1-9   AN ACT

1-10 relating to indemnification provisions in construction contracts.
1-11   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12   SECTION 1.   The Civil Practice and Remedies Code is amended
1-13 by adding Title 10 to read as follows:
1-14   TITLE 10. ADDITIONAL MISCELLANEOUS PROVISIONS
1-15   CHAPTER 502. INDEMNITY PROVISIONS IN CONSTRUCTION CONTRACTS
1-16   Sec. 502.001. DEFINITIONS. In this chapter:
1-17   (1) "Claim" includes a loss or liability for a claim,
1-18 damage, expense, or governmentally imposed fine, penalty,
1-19 administrative action, or other action.
1-20   (2) "Construction contract" means a contract,
1-21 subcontract, or agreement or a performance bond assuring the
1-22 performance of any of the foregoing, entered into or made by an
1-23 owner, contractor, construction manager, subcontractor, supplier,
1-24 material or equipment lessor, for the construction, alteration,
1-25 renovation, remodeling, repair, or maintenance of, or for the
1-26 furnishing of material or equipment for, a building, structure,
1-27 appurtenance, or other improvement to or on public or private real
1-28 property, including moving, demolition, and excavation connected
1-29 with the real property. The term includes an agreement to which a
1-30 contractor and an owner's lender are parties regarding an
1-31 assignment of the construction contract or other modifications to
1-32 the construction contract.
1-33   (3) "Indemnitor" means a party to a construction
1-34 contract that is required to provide indemnification or additional
1-35 insured status to another party to the construction contract or to a
1-36 third party.
1-37   Sec. 502.002. PERMISSIBLE CONTRACT PROVISION. Parties may
1-38 agree in a construction contract upon an indemnity or additional
1-39 insured provision that is not prohibited by this chapter.
1-40   Sec. 502.003. AGREEMENT   VOID   AND   UNENFORCEABLE.
1-41 (a) Except as provided by Section 502.004, a provision in a
1-42 construction contract, or in an agreement collateral to or
1-43 affecting a construction contract, is void and unenforceable as
1-44 against public policy if it requires an indemnitor to indemnify,
1-45 hold harmless, or defend another party to the construction contract
1-46 or a third party against a claim to the extent that the claim is
1-47 caused by the negligence or fault, breach or violation of a statute,
1-48 ordinance, governmental regulation, standard, or rule, or breach of
1-49 contract of the indemnitee, its agent or employee, or any third
1-50 party under the control or supervision of the indemnitee, other
1-51 than the indemnitor or its agent, employee, or subcontractor of any
1-52 tier.
1-53   Sec. 502.004. EXCEPTION FOR EMPLOYEE CLAIM.   Section
1-54 502.003 does not apply to a provision in a construction contract
1-55 that requires a person to indemnify, hold harmless, or defend
1-56 another party to the construction contract or a third party against
1-57 a claim for the bodily injury or death of an employee of the
1-58 indemnitor, its agent, or its subcontractor of any tier.
1-59   Sec. 502.005. UNENFORCEABLE   ADDITIONAL   INSURANCE
1-60 PROVISION. A provision in a construction contract that requires
1-61 the purchase of additional insured coverage, or any coverage
1-62 endorsement or provision within an insurance policy providing
1-63 additional insured coverage, is void and unenforceable to the

2-1 extent that it requires or provides coverage, the scope of which is
2-2 prohibited under this chapter for an agreement to indemnify, hold
2-3 harmless, or defend.
2-4   Sec. 502.006. EXCLUSIONS. This chapter does not affect:
2-5   (1) an insurance policy, including a policy issued
2-6 under an owner-controlled or owner-sponsored consolidated
2-7 insurance program or a contractor-controlled or
2-8 contractor-sponsored consolidated insurance program, except a
2-9 policy under Sections 502.003 and 502.005;
2-10   (2) a cause of action for breach of contract or
2-11 warranty that exists independently of an indemnity obligation;
2-12   (3) a provision in a construction contract that
2-13 requires the indemnitor to purchase or maintain insurance covering
2-14 the acts or omissions of the indemnitor;
2-15   (4) indemnity provisions contained in loan and
2-16 financing documents, other than construction contracts to which the
2-17 contractor and owner's lender are parties as provided under Section
2-18 502.001(2);
2-19   (5) general agreements of indemnity required by
2-20 sureties as a condition of execution of bonds for construction
2-21 contracts;
2-22   (6) the benefits and protections under the workers'
2-23 compensation laws of this state;
2-24   (7) the benefits or protections under the governmental
2-25 immunity laws of this state; or
2-26   (8) agreements subject to the provisions of Chapter
2-27 127.
2-28   Sec. 502.007. LIABILITY INSURANCE. This chapter does not
2-29 otherwise affect a construction contract provision that requires a
2-30 party to the contract to purchase:
2-31   (1) owners and contractors protective liability
2-32 insurance;
2-33   (2) railroad protective liability insurance;
2-34   (3) contractors all-risk insurance; or
2-35   (4) builders all-risk insurance.
2-36   Sec. 502.008. PROHIBITION OF WAIVER. The provisions of
2-37 this chapter may not be waived by contract or otherwise. Any
2-38 purported waiver is void and unenforceable.
2-39   Sec. 502.009. APPLICABILITY OF TEXAS LAW. Under this
2-40 chapter, the law of this state, exclusive of this state's
2-41 choice-of-law rules that would apply the laws of another
2-42 jurisdiction, shall apply to every construction contract agreement
2-43 affecting improvements to real property within the State of Texas.
2-44   SECTION 2. Section 2252.902, Government Code, is repealed.
2-45   SECTION 3. The changes in law made by this Act apply only to
2-46 an original construction contract with an owner of an improvement
2-47 or contemplated improvement that is entered into on or after the
2-48 effective date of this Act. If an original construction contract
2-49 with an owner of an improvement or contemplated improvement is
2-50 entered into on or after the effective date of this Act, the changes
2-51 in law made by this Act apply to a related subcontract, purchase
2-52 order contract, personal property lease agreement, and insurance
2-53 policy. If an original construction contract with an owner of an
2-54 improvement or contemplated improvement is entered into before the
2-55 effective date of this Act, that original construction contract and
2-56 a related subcontract, purchase order contract, personal property
2-57 lease agreement, and insurance policy are governed by the law in
2-58 effect immediately before the effective date of this Act, and that
2-59 law is continued in effect for that purpose.
2-60   SECTION 4. This Act takes effect September 1, 2009.

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