

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Darby, Longoria, Paul, Leach

H.B. No. 2049

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

H.B. No. 2049

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.

# ADOPTED

MAY 22 2015

By: \_\_\_\_\_ *Atty. Gen.* \_\_\_\_\_ .B. No. \_\_\_\_\_  
Secretary of the Senate

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: *[Signature]* \_\_\_\_\_ C.S. \_\_\_B. No. 2049

## A BILL TO BE ENTITLED

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

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

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

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

22 (b) Except as provided by Subsection (c), a covenant or  
23 promise in, in connection with, or collateral to a contract for  
24 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.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 23, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Local Government Code to specify a covenant in connection with a contract for certain services, which a governmental agency is a party, is void if the covenant provides that a licensed individual must defend a party over certain claims. The bill would permit certain governmental contracts for architectural or engineering services to include reimbursement of a governmental agency's attorney's fees and include the governmental entity as an additional insured under the engineer's or architect's liability insurance policy. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, EK

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 15, 2015**

**TO:** Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **Committee Report 2nd House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Local Government Code to specify a covenant in connection with a contract for certain services, which a governmental agency is a party, is void if the covenant provides that a licensed individual must defend a party over certain claims. The bill would permit certain governmental contracts for architectural or engineering services to include reimbursement of a governmental agency's attorney's fees and include the governmental entity as an additional insured under the engineer's or architect's liability insurance policy. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, EK



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 5, 2015**

**TO:** Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Local Government Code to specify certain governmental contracts with architects or engineers that contain indemnification clauses may not include a duty to defend but may include the governmental agency to seek reimbursement for attorney fees after a final adjudication. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, EK

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**April 10, 2015**

**TO:** Honorable Wayne Smith, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Introduced**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Local Government Code to specify certain governmental contracts with architects or engineers that contain indemnification clauses may not include a duty to defend but may include the governmental agency to seek reimbursement for attorney fees after a final adjudication. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, EK

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**March 29, 2015**

**TO:** Honorable Wayne Smith, Chair, House Committee on Licensing & Administrative Procedures

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2049** by Darby (Relating to indemnification and duties of engineers and architects under certain governmental contracts.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Local Government Code to specify certain governmental contracts with architects or engineers that contain indemnification clause may not provide include a duty to defend but may include the governmental agency to seek reimbursement for attorney fees after a final adjudication. The bill would require a contract for certain services with a governmental entity to require a license engineer or registered architect to perform certain services.

The Office of Court Administration reported no significant fiscal impact to the state court system is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, EK