

BILL ANALYSIS

S.B. 1766
By: Creighton
County Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, certain governmental entities are including provisions in contracts with professional appraisers requiring the appraiser to indemnify or hold harmless a governmental entity against liability for damage and defend the entity in certain actions other than those caused by the appraiser—even when the potential damages arise from the actions of the governmental entity itself. Requiring these professionals to defend their employers through such contractual provisions in a professional services contract is typically uninsurable under a professional liability insurance policy. Appraisers are often small businesses that cannot afford the significant legal expense of a duty to defend a governmental entity. Additionally, since appraisals are contemporaneously reviewed by all parties at the time of closing, there is little to sue over after the fact. S.B. 1766 seeks to ensure appraisers cannot be held liable for the negligence or mistakes made by an employing governmental entity by rendering these contract provisions void and unenforceable.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1766 amends the Local Government Code to set out provisions relating to the contents of a contract for appraisal services entered into by a licensed appraiser and a municipality, county, public school district, conservation and reclamation district, hospital organization, or other political subdivision. With respect to these contracts, the bill does the following:

- renders void and unenforceable a contract provision or a promise in connection with the contract that requires an appraiser to do either of the following:
 - indemnify or hold harmless a governmental agency against liability for damage, other than damage caused by or resulting from negligence, intentional tort, intellectual property infringement, or failure to make an applicable payment; or
 - defend a person against a claim based wholly or partly on the negligence or fault of, or breach of contract by the contracting governmental agency, an employee or agent of the agency, or another person over which the agency exercises control, other than the appraiser or an employee, agent, or consultant thereof.
- requires the contract to establish a standard of care under which the appraiser must perform services with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license and as

expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser;

- renders void and unenforceable a contract provision that establishes a different standard of care; and
- authorizes the contract to require:
 - the reimbursement of a governmental agency's reasonable attorney's fees in proportion to an appraiser's liability; and
 - an appraiser to name a governmental agency as an additional insured under the appraiser's general liability insurance policy and provide any defense provided by the policy.

The bill expressly does not prohibit a governmental agency from including and enforcing a contract provision that relates to the scope, fees, and schedule of a project in the contract. These provisions apply only to a contract for which a request for proposals or a request for qualifications is first published or distributed on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.