House Engrossed Senate Bill

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KEN BENNETT
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CHAPTER 238

SENATE BILL 1231

AN ACT

AMENDING SECTIONS 34-101, 34-226, 41-2503 AND 41-2586, ARIZONA REVISED STATUTES; RELATING TO CONSTRUCTION INDEMNITY AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 34-101, Arizona Revised Statutes, is amended to read:

34-101. Definitions

In this title, unless the context otherwise requires:

1. "Agent":

(a) Means any county, city or town, or officer, board or commission of any county, city or town, and irrigation, power, electrical, drainage, flood protection and flood control districts, tax levying public improvement districts and county or city improvement districts.

(b) Includes any county board of supervisors and any representative authorized by an agent to act as an agent for the purpose of authorizing necessary change orders to previously awarded contracts in accordance with guidelines established by rule of the agent, including the board of supervisors.

2. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.

3. "Construction":

(a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.

(b) Does not include the routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

4. "Construction-manager-at-risk" means a project delivery method in which:

(a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the agent may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

(b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

(c) Design and construction of the project may be either:

(i) Sequential with the entire design complete before construction commences.

(ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

(d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

5. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

(a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.

(b) A combination of construction and, as elected by the agent, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

6. "Contract" means all types of agent agreements, regardless of what they are called, for the procurement of services pursuant to this title.

7. "Contractor" means any person who has a contract with an agent.

8. "Design-bid-build" means a project delivery method in which:

(a) There is a sequential award of two separate contracts.

(b) The first contract is for design services.

(c) The second contract is for construction.

(d) Design and construction of the project are in sequential phases.

(e) Finance services, maintenance services and operations services are not included.

9. "Design-build" means a project delivery method in which:

(a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the agent may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

(b) Design and construction of the project may be either:

(i) Sequential with the entire design complete before construction commences.

(ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

(c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

10. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM THAT IS REGISTERED BY THE STATE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32, CHAPTER 1 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE ARCHITECTURE OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND PERSONS EMPLOYED BY THE REGISTERED INDIVIDUAL OR FIRM.

~~10.~~ 11. "Design requirements":

(a) Means at a minimum the agent's written description of the project or service to be procured, including:

(i) The required features, functions, characteristics, qualities and properties.

(ii) The anticipated schedule, including start, duration and completion.

(iii) The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

(b) May include:

(i) Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by ~~an architect or engineer, as appropriate,~~ A DESIGN PROFESSIONAL who is registered pursuant to section 32-121.

(ii) Additional design information or documents that the agent elects to include.

~~11.~~ 12. "Design services" means architect services, engineer services or landscape architect services.

~~12.~~ 13. "Direct selection" means the selection of a technical registrant without the requirement of advertising or the use of a current register.

~~13.~~ 14. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in title 32, chapter 1.

~~14.~~ 15. "Finance services" means financing for a construction services project.

~~15.~~ 16. "Horizontal construction" means construction of highways, roads, streets, bridges, canals, floodways, earthen dams, landfills, light rail and airport runways, taxiways and aprons. For the purposes of this paragraph, light rail does not include any related rail stations, maintenance facilities or parking facilities.

~~16.~~ 17. "Job-order-contracting" means a project delivery method in which:

(a) The contract is a requirements contract for indefinite quantities of construction.

(b) The construction to be performed is specified in job orders issued during the contract.

(c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

~~17.~~ 18. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.

~~18.~~ 19. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

~~19.~~ 20. "Materials":

(a) Means all property, including equipment, supplies, printing, insurance and leases of property.

(b) Does not include land, a permanent interest in land or real property or leasing space.

~~20.~~ 21. "Operations services" means routine operation of existing facilities, structures, buildings or real property.

~~21.~~ 22. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.

~~22.~~ 23. "Preconstruction services" means services and other activities during the design phase.

~~23.~~ 24. "Procurement":

(a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.

(b) Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

~~24.~~ 25. "Public competition" means a competitive procurement process pursuant to section 34-103, subsection G that includes advertising in a public newspaper and a qualification-based selection process.

~~25.~~ 26. "Services":

(a) Means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance.

(b) Does not include employment agreements or collective bargaining agreements.

~~26.~~ 27. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with an agent.

~~27.~~ 28. "Technical registrant" means a person who provides any of the professional services listed in title 32, chapter 1.

Sec. 2. Section 34-226, Arizona Revised Statutes, is amended to read:

34-226. State preemption; indemnity agreements in construction and design professional services contracts void; definitions

~~A. A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract or architect-engineer professional service contract or subcontract that purports to indemnify, to hold harmless or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.~~

A. THE REGULATION AND USE OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES CONTRACTS ARE OF STATEWIDE CONCERN. THE REGULATION OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES CONTRACTS PURSUANT TO THIS SECTION AND THEIR USE ARE NOT SUBJECT TO FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

B. IF A CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL PROVIDES WORK, SERVICES, STUDIES, PLANNING, SURVEYS OR OTHER PREPARATORY WORK IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT, THE CONTRACTING AGENT MAY

REQUIRE THAT THE CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT REQUIRE THE CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE AGENT, AND ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF SUCH CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL OR OTHER PERSONS EMPLOYED OR USED BY SUCH CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL IN THE PERFORMANCE OF THE CONTRACT OR SUBCONTRACT. A SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT MAY ALSO REQUIRE ANY SUBCONTRACTOR OR DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE AGENT AND THAT CONTRACTOR, SUBCONTRACTOR, OR DESIGN PROFESSIONAL WHO EXECUTED THE SUBCONTRACT, AND THEIR RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT CAUSED BY NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF THE INDEMNIFYING SUBCONTRACTOR OR DESIGN PROFESSIONAL, OR OTHER PERSONS EMPLOYED OR USED BY THE INDEMNIFYING SUBCONTRACTOR OR DESIGN PROFESSIONAL IN CONNECTION WITH THE SUBCONTRACT. NOTHING IN THIS SECTION SHALL PROHIBIT THE REQUIREMENT OF INSURANCE COVERAGE THAT COMPLIES WITH THIS SECTION, INCLUDING THE DESIGNATION OF ANY PERSON AS AN ADDITIONAL INSURED ON A GENERAL LIABILITY INSURANCE POLICY OR AS A DESIGNATED INSURED ON AN AUTOMOBILE LIABILITY POLICY PROVIDED IN CONNECTION WITH A CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT.

C. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT SHALL NOT REQUIRE THAT THE CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL DEFEND, INDEMNIFY, INSURE OR HOLD HARMLESS THE CONTRACTING AGENT OR ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS OR SUBCONTRACTORS FROM ANY LIABILITY, DAMAGE, LOSS, CLAIM, ACTION OR PROCEEDING, AND ANY CONTRACT PROVISION THAT IS NOT PERMITTED BY SUBSECTION B OF THIS SECTION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS VOID.

~~B.~~ D. Notwithstanding subsection ~~A~~ C OF THIS SECTION, a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and ~~who~~ THAT, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.

E. IF ANY PROVISION OR CONDITION CONTAINED IN THIS SECTION CONFLICTS WITH ANY PROVISION OF A CONTRACT BETWEEN THE STATE OR A POLITICAL SUBDIVISION OF THE STATE AND THE FEDERAL GOVERNMENT, SUCH PROVISION OF THIS SECTION IN CONFLICT SHALL NOT APPLY TO ANY CONSTRUCTION CONTRACT OR SUBCONTRACT, OR DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT TO THE EXTENT SUCH

CONFLICT EXISTS, BUT ALL PROVISIONS OF THIS SECTION WITH WHICH THERE IS NO SUCH CONFLICT SHALL APPLY.

~~C.~~ F. ~~In~~ FOR THE PURPOSES OF this section:

~~1. "Architect-engineer professional service contract or subcontract" means a written or oral agreement relating to the design, construction administration, study, evaluation or other professional services furnished in connection with any actual or proposed construction, alteration, repair, maintenance, moving, demolition or excavation of a structure, street or roadway, appurtenance or other development or improvement to land.~~

~~2.~~ 1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, RELOCATION, moving, demolition or excavation OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, ~~or other~~ development or OTHER improvement to land.

2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE SUPERVISION OF A DESIGN PROFESSIONAL OR THE BONA FIDE EMPLOYEES OF THE DESIGN PROFESSIONAL.

3. "DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT" MEANS A WRITTEN OR ORAL AGREEMENT RELATING TO THE PLANNING, DESIGN, CONSTRUCTION ADMINISTRATION, STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING, MAPPING, MATERIAL SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR TECHNICAL SERVICES FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY, PLANNING, SURVEY, ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT, ALTERATION, REPAIR, MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, DEVELOPMENT OR OTHER IMPROVEMENT TO LAND.

4. "OTHER PERSON EMPLOYED OR USED" MEANS A SUBCONTRACTOR TO A CONTRACTOR OR DESIGN PROFESSIONAL IN ANY TIER, OR ANY OTHER PERSON OR ENTITY WHO PERFORMS WORK OR DESIGN PROFESSIONAL SERVICES, OR PROVIDES LABOR, SERVICES, MATERIALS OR EQUIPMENT IN CONNECTION WITH A CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICE CONTRACT OR SUBCONTRACT SUBJECT TO THIS SECTION.

Sec. 3. Section 41-2503, Arizona Revised Statutes, is amended to read:

41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.

2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

3. "Change order" means a written order ~~which~~ THAT is signed by a procurement officer and ~~which~~ THAT directs the contractor to make changes

that the changes clause of the contract authorizes the procurement officer to order.

4. "Construction":

(a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.

(b) Does not include:

(i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

(ii) The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.

5. "Construction-manager-at-risk" means a project delivery method in which:

(a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.

(b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

(c) Design and construction of the project may be either:

(i) Sequential with the entire design complete before construction commences.

(ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

(d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

6. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

(a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.

(b) A combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

7. "Contract" means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.

8. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.

9. "Contractor" means any person who has a contract with a state governmental unit.

10. "Data" means documented information, regardless of form or characteristic.

11. "Department" means the department of administration.

12. "Design-bid-build" means a project delivery method in which:

(a) There is a sequential award of two separate contracts.

(b) The first contract is for design services.

(c) The second contract is for construction.

(d) Design and construction of the project are in sequential phases.

(e) Finance services, maintenance services and operations services are not included.

13. "Design-build" means a project delivery method in which:

(a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the purchasing agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.

(b) Design and construction of the project may be either:

(i) Sequential with the entire design complete before construction commences.

(ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.

(c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

14. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM THAT IS REGISTERED BY THE STATE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32, CHAPTER 1 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE ARCHITECTURE OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND ANY PERSON EMPLOYED BY THE REGISTERED INDIVIDUAL OR FIRM.

~~14.~~ 15. "Design requirements":

(a) Means at a minimum the purchasing agency's written description of the project or service to be procured, including:

(i) The required features, functions, characteristics, qualities and properties.

(ii) The anticipated schedule, including start, duration and completion.

(iii) The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

(b) May include:

(i) Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by ~~an architect or engineer, as appropriate,~~ A DESIGN PROFESSIONAL who is registered pursuant to section 32-121.

(ii) Additional design information or documents that the purchasing agency elects to include.

~~15.~~ 16. "Design services" means architect services, engineer services or landscape architect services.

~~16.~~ 17. "Designee" means a duly authorized representative of the director.

~~17.~~ 18. "Director" means the director of the department of administration.

~~18.~~ 19. "Employee" means an individual drawing a salary from a state governmental unit, whether elected or not, and any noncompensated individual performing personal services for any state governmental unit.

~~19.~~ 20. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in title 32, chapter 1.

~~20.~~ 21. "Finance services" means financing for a construction services project.

~~21.~~ 22. "General services administration contract" means contracts awarded by the United States government general services administration.

~~22.~~ 23. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.

~~23.~~ 24. "Job-order-contracting" means a project delivery method in which:

(a) The contract is a requirements contract for indefinite quantities of construction.

(b) The construction to be performed is specified in job orders issued during the contract.

(c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

~~24.~~ 25. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.

~~25.~~ 26. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

~~26.~~ 27. "Materials":

(a) Means all property, including equipment, supplies, printing, insurance and leases of property.

(b) Does not include land, a permanent interest in land or real property or leasing space.

~~27.~~ 28. "Operations services" means routine operation of existing facilities, structures, buildings or real property.

~~28.~~ 29. "Owner" means a state purchasing agency or state governmental unit.

~~29.~~ 30. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.

~~30.~~ 31. "Preconstruction services" means services and other activities during the design phase.

~~31.~~ 32. "Procurement":

(a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.

(b) Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

~~32.~~ 33. "Procurement officer":

(a) Means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts.

(b) Includes an authorized representative acting within the limits of the authorized representative's authority.

~~33.~~ 34. "Purchasing agency" means any state governmental unit ~~which~~ THAT is authorized by this chapter or rules adopted pursuant to this chapter, or by way of delegation from the director, to enter into contracts.

~~34.~~ 35. "Services":

(a) Means the furnishing of labor, time or effort by a contractor or subcontractor ~~which~~ THAT does not involve the delivery of a specific end product other than required reports and performance.

(b) Does not include employment agreements or collective bargaining agreements.

~~35.~~ 36. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

~~36.~~ 37. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a state governmental unit.

~~37.~~ 38. "Using agency" means any state governmental unit ~~which~~ THAT utilizes any materials, services or construction procured under this chapter.

Sec. 4. Section 41-2586, Arizona Revised Statutes, is amended to read:

41-2586. <u>State preemption; indemnity agreements in construction and design professional services contracts void; definitions</u>

A. A covenant, clause or understanding in, collateral to or affecting a construction contract or subcontract ~~or architect-engineer professional service contract or subcontract~~ that purports to indemnify, to hold harmless

or to defend the promisee of, from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's agents, employees or indemnitee is against the public policy of this state and is void.

B. THE REGULATION AND USE OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES CONTRACTS ARE OF STATEWIDE CONCERN. THE REGULATION OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES CONTRACTS PURSUANT TO THIS SECTION AND THEIR USE ARE NOT SUBJECT TO FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

C. IF A DESIGN PROFESSIONAL PROVIDES WORK, SERVICES, STUDIES, PLANNING, SURVEYS OR OTHER PREPARATORY WORK IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT, THE STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT OR PROPERTY OWNER MAY REQUIRE THAT THE DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT REQUIRE THE DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT OR PROPERTY OWNER, AND ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF SUCH DESIGN PROFESSIONAL OR OTHER PERSONS EMPLOYED OR USED BY SUCH DESIGN PROFESSIONAL IN THE PERFORMANCE OF THE CONTRACT OR SUBCONTRACT. A DESIGN PROFESSIONAL SERVICES SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT MAY ALSO REQUIRE ANY DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT, OR PROPERTY OWNER AND THE INDEMNIFIED DESIGN PROFESSIONAL WHO EXECUTED THE SUBCONTRACT, AND THEIR RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF SUCH DESIGN PROFESSIONAL, OR PERSONS EMPLOYED OR USED BY THE INDEMNIFYING DESIGN PROFESSIONAL IN CONNECTION WITH THE SUBCONTRACT. NOTHING IN THIS SECTION SHALL PROHIBIT THE REQUIREMENT OF INSURANCE COVERAGE THAT COMPLIES WITH THIS SECTION, INCLUDING THE DESIGNATION OF THE STATE, STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT OR PROPERTY OWNER AS AN ADDITIONAL INSURED ON A GENERAL LIABILITY INSURANCE POLICY OR AS A DESIGNATED INSURED ON AN AUTOMOBILE LIABILITY POLICY PROVIDED IN CONNECTION WITH A CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT.

D. A COVENANT, CLAUSE OR UNDERSTANDING IN, COLLATERAL TO OR AFFECTING A DESIGN PROFESSIONAL SERVICES SUBCONTRACT THAT PURPORTS TO INDEMNIFY, TO HOLD HARMLESS OR TO DEFEND THE PROMISEE OF, FROM OR AGAINST LIABILITY FOR LOSS OR DAMAGE RESULTING FROM THE NEGLIGENCE OF THE PROMISEE OR THE PROMISEE'S AGENTS, EMPLOYEES OR INDEMNITEE IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS VOID.

E. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, A DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT SHALL NOT REQUIRE THAT A DESIGN PROFESSIONAL DEFEND, INDEMNIFY, INSURE OR HOLD HARMLESS THE STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT OR PROPERTY OWNER OR ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS OR SUBCONTRACTORS FROM ANY LIABILITY, DAMAGE, LOSS, CLAIM, ACTION OR PROCEEDING, AND ANY CONTRACT PROVISION THAT IS NOT PERMITTED BY SUBSECTION C OF THIS SECTION IS AGAINST THE PUBLIC POLICY OF THIS STATE AND IS VOID.

~~B.~~ F. Notwithstanding subsection A OF THIS SECTION, a contractor who is responsible for the performance of a construction contract or subcontract may fully indemnify a person, firm, corporation, state or other agency for whose account the construction contract or subcontract is not being performed and ~~who~~ THAT, as an accommodation, enters into an agreement with the contractor that permits the contractor to enter on or adjacent to its property to perform the construction contract or subcontract for others.

G. IF ANY PROVISION OR CONDITION CONTAINED IN THIS SECTION CONFLICTS WITH ANY PROVISION OF A CONTRACT BETWEEN THE STATE OR A POLITICAL SUBDIVISION OF THE STATE AND THE FEDERAL GOVERNMENT, SUCH PROVISION OF THIS SECTION IN CONFLICT SHALL NOT APPLY TO ANY CONSTRUCTION CONTRACT OR SUBCONTRACT, OR DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT TO THE EXTENT SUCH CONFLICT EXISTS, BUT ALL PROVISIONS OF THIS SECTION WITH WHICH THERE IS NO SUCH CONFLICT, SHALL APPLY.

~~C.~~ H. ~~In~~ FOR THE PURPOSES OF this section:

~~1. "Architect-engineer professional service contract or subcontract" means a written or oral agreement relating to the design, construction administration, study, evaluation or other professional services furnished in connection with any actual or proposed construction, alteration, repair, maintenance, moving, demolition or excavation of a structure, street or roadway, appurtenance or other development or improvement to land.~~

~~2.~~ 1. "Construction contract or subcontract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, RELOCATION, moving, demolition or excavation OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, ~~or other~~ development or OTHER improvement to land.

2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE SUPERVISION OF A DESIGN PROFESSIONAL OR ANY PERSON EMPLOYED BY THE DESIGN PROFESSIONAL.

3. "DESIGN PROFESSIONAL SERVICE CONTRACT OR SUBCONTRACT" MEANS A WRITTEN OR ORAL AGREEMENT RELATING TO THE PLANNING, DESIGN, CONSTRUCTION ADMINISTRATION, STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING, MAPPING, MATERIAL SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR TECHNICAL SERVICES FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY,

1 PLANNING, SURVEY, ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT,
2 ALTERATION, REPAIR, MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION
3 OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, DEVELOPMENT OR
4 OTHER IMPROVEMENT TO LAND.
5 4. "OTHER PERSON EMPLOYED OR USED" MEANS A SUBCONTRACTOR TO A
6 CONTRACTOR OR DESIGN PROFESSIONAL IN ANY TIER, OR ANY OTHER PERSON OR ENTITY
7 WHO PERFORMS WORK OR DESIGN PROFESSIONAL SERVICES, OR PROVIDES LABOR,
8 SERVICES, MATERIALS OR EQUIPMENT IN CONNECTION WITH A CONSTRUCTION CONTRACT
9 OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICE CONTRACT OR SUBCONTRACT SUBJECT
10 TO THIS SECTION.
11 Sec. 5. Effective date
12 This act does not affect construction contracts or design professional
13 services contracts entered into before the effective date of this act, or
14 construction subcontracts or design professional services subcontracts
15 relating to construction contracts or design professional services
16 subcontracts entered into before the effective date of this act.

APPROVED BY THE GOVERNOR JUNE 20, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 20, 2013.

Passed the House June 13, 2013,

by the following vote: 54 Ayes,

4 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 18, 2013,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1231

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate June 14, 2013

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

17 day of June, 2013

at 8:25 o'clock A M.

Mikhaila Howard
Secretary to the Governor

Approved this 20th day of

June

at 11:58 o'clock A M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 20th day of June, 2013

at 2:12 o'clock P M.

Secretary of State

S.B. 1231