

AMENDED IN ASSEMBLY AUGUST 20, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 972

Introduced by Senator Wolk

February 8, 2010

An act to amend Section 2782.8 of the Civil Code, relating to indemnity.

LEGISLATIVE COUNSEL'S DIGEST

SB 972, as amended, Wolk. Indemnity: design professionals.

Existing law provides, for all contracts, and amendments to contracts, entered into on or after January 1, 2007, with a public agency for design professional services, all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting these contracts, that purport to indemnify, including the cost to defend, the public agency by a design professional against liability for claims against the public agency, are unenforceable, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional.

This bill would ~~further~~ provide, with respect to ~~all~~ contracts and amendments to contracts entered into ~~by~~ *on or after January 1, 2011*, *with* a public agency for design professional services, that all provisions, clauses, covenants, and agreements contained in, collateral to, or affecting these contracts or amendments to contracts that purport to

require the ~~duty defend to~~ *design professional to defend the public agency* under an indemnity agreement, *including the duty and the cost to defend*, are unenforceable. *The bill would provide that all contracts and all solicitation documents between a public agency and a design professional are deemed to incorporate these provisions by reference.*

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2782.8 of the Civil Code is amended to
 2 read:

3 2782.8. (a) For all contracts, and amendments thereto, entered
 4 into on or after January 1, 2007, with a public agency for design
 5 professional services, all provisions, clauses, covenants, and
 6 agreements contained in, collateral to, or affecting any such
 7 contract, and amendments thereto, that purport to indemnify,
 8 including the duty and the cost to defend, the public agency by a
 9 design professional against liability for claims against the public
 10 agency, are unenforceable, except for claims that arise out of,
 11 pertain to, or relate to the negligence, recklessness, or willful
 12 misconduct of the design professional. *The duty to defend and the*
 13 *duty to indemnify are both limited as provided in this section.* This
 14 section shall not be waived or modified by contractual agreement,
 15 act, or omission of the parties. Contractual provisions, clauses,
 16 covenants, or agreements not expressly prohibited herein are
 17 reserved to the agreement of the parties.

18 (b) *All contracts and all solicitation documents, including*
 19 *requests for proposal, invitations for bid, and other solicitation*
 20 *documents, between a public agency and a design professional,*
 21 *are deemed to incorporate by reference the provisions of this*
 22 *section.*

23 ~~(b)~~
 24 (c) For purposes of this section, the following definitions apply:

25 (1) “Public agency” includes any county, city, city and county,
 26 district, school district, public authority, municipal corporation,
 27 or other political subdivision, joint powers authority, or public
 28 corporation in the state. Public agency does not include the State
 29 of California.

30 (2) “Design professional” includes all of the following:

1 (A) An individual licensed as an architect pursuant to Chapter
2 3 (commencing with Section 5500) of Division 3 of the Business
3 and Professions Code, and a business entity offering architectural
4 services in accordance with that chapter.

5 (B) An individual licensed as a landscape architect pursuant to
6 Chapter 3.5 (commencing with Section 5615) of Division 3 of the
7 Business and Professions Code, and a business entity offering
8 landscape architectural services in accordance with that chapter.

9 (C) An individual registered as a professional engineer pursuant
10 to Chapter 7 (commencing with Section 6700) of Division 3 of
11 the Business and Professions Code, and a business entity offering
12 professional engineering services in accordance with that chapter.

13 (D) An individual licensed as a professional land surveyor
14 pursuant to Chapter 15 (commencing with Section 8700) of
15 Division 3 of the Business and Professions Code, and a business
16 entity offering professional land surveying services in accordance
17 with that chapter.

18 ~~(e)~~

19 (d) This section shall only apply to a professional service
20 contract, or any amendment thereto, entered into on or after January
21 1, 2007.

22 (e) *The amendments made to this section by the act adding this*
23 *subdivision shall apply to services offered pursuant to a design*
24 *professional contract, or any amendment thereto, entered into on*
25 *or after January 1, 2011.*

26 (f) *Nothing in this section shall abrogate the provisions of*
27 *Section 1104 of the Public Contract Code.*