

AMENDED IN ASSEMBLY AUGUST 24, 2010  
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**

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**Introduced by Senator Wolk**

February 8, 2010

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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 provide, with respect to contracts and amendments to contracts entered into 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 design professional to defend the public agency under an indemnity agreement, including the duty and the cost to defend, are unenforceable, *except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional*. 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 indemnify, including the duty and the*  
14 *cost to defend, is* limited as provided in this section. This section  
15 shall not be waived or modified by contractual agreement, act, or  
16 omission of the parties. Contractual provisions, clauses, covenants,  
17 or agreements not expressly prohibited herein are reserved to the  
18 agreement of the parties.

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

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,

1 or other political subdivision, joint powers authority, or public  
2 corporation in the state. Public agency does not include the State  
3 of California.

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

5 (A) An individual licensed as an architect pursuant to Chapter  
6 3 (commencing with Section 5500) of Division 3 of the Business  
7 and Professions Code, and a business entity offering architectural  
8 services in accordance with that chapter.

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

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

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

22 (d) This section shall only apply to a professional service  
23 contract, or any amendment thereto, entered into on or after January  
24 1, 2007.

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

29 (f) Nothing in this section shall abrogate the provisions of  
30 Section 1104 of the Public Contract Code.