

**First Regular Session  
Seventieth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0706.01 Jerry Barry x4341

**HOUSE BILL 15-1197**

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**HOUSE SPONSORSHIP**

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**SENATE SPONSORSHIP**

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**House Committees**  
Judiciary

**Senate Committees**  
Judiciary

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**A BILL FOR AN ACT**

101      **CONCERNING LIMITATIONS ON INDEMNITY OBLIGATIONS IN PUBLIC**  
102      **CONSTRUCTION CONTRACTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

Currently, public entities in construction-related contracts are prohibited from being indemnified for the public entity's own negligence. The bill clarifies this provision by specifying that:

- !      It also applies to a design contract and to an obligation to pay for the defense of the public entity;
- !      The contractor's obligation is limited to the amount of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

HOUSE  
3rd Reading Unamended  
March 9, 2015

HOUSE  
Amended 2nd Reading  
March 6, 2015

negligence attributable to the contractor and its agents, representatives, subcontractors, and suppliers; and  
! The obligation only arises when the amount of its liability for the losses of the third party are adjudicated.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 13-50.5-102, **amend**  
3 (8) as follows:

4 **13-50.5-102. Right to contribution - contract or agreement**  
5 **provision to indemnify or hold harmless void against public policy.**

6 (8) (a) ~~In the event that a~~ ANY public contract or agreement for ~~the~~  
7 ARCHITECTURAL, ENGINEERING, OR SURVEYING SERVICES; DESIGN;  
8 construction; alteration; repair; or maintenance of any building, structure,  
9 highway, bridge, viaduct, water, sewer, or gas distribution system, or  
10 other works dealing with construction, or any moving, demolition, or  
11 excavation connected with such construction THAT contains ~~any~~ A  
12 covenant, promise, agreement, or combination thereof to DEFEND,  
13 indemnify, or hold harmless any public entity IS ENFORCEABLE ONLY TO  
14 THE EXTENT AND FOR AN AMOUNT REPRESENTED BY THE DEGREE OR  
15 PERCENTAGE OF NEGLIGENCE OR FAULT ATTRIBUTABLE TO THE INDEMNITY  
16 OBLIGOR OR THE INDEMNITY OBLIGOR'S AGENTS, REPRESENTATIVES,  
17 SUBCONTRACTORS, OR SUPPLIERS. ANY SUCH COVENANT, PROMISE,  
18 AGREEMENT, OR COMBINATION THEREOF REQUIRING AN INDEMNITY  
19 OBLIGOR TO DEFEND, INDEMNIFY, OR HOLD HARMLESS ANY PUBLIC ENTITY  
20 ~~from that public entity's own negligence then such covenant, promise,~~  
21 ~~agreement, or combination thereof~~ is void as against public policy and  
22 wholly unenforceable.

23 (b) This subsection (8) shall not apply to construction bonds,

1 contracts of insurance, OR INSURANCE POLICIES THAT PROVIDE FOR THE  
2 DEFENSE, INDEMNIFICATION, OR HOLDING HARMLESS OF PUBLIC ENTITIES  
3 OR contract clauses regarding insurance. ~~or contract clauses regarding~~  
4 ~~costs of defense of litigation arising out of the work or to any covenant,~~  
5 ~~promise, agreement, or combination thereof to indemnify or hold~~  
6 ~~harmless a contracting party against claims arising out of the negligent~~  
7 ~~acts of the indemnitor and its subcontractors in the performance of the~~  
8 ~~work under the contract. However, no contracting party shall be required~~  
9 ~~to indemnify or hold harmless from any liability or damages arising from~~  
10 ~~the negligent acts of the indemnified party. This subsection (8) is intended~~  
11 only to affect the contractual relationship between the parties relating to  
12 THE DEFENSE, indemnification, OR HOLDING HARMLESS of public entities,  
13 ~~for the negligent acts of the public entity,~~ and nothing in this subsection  
14 (8) shall affect any other rights or remedies of public entities or  
15 contracting parties.

16 (c) IF THE INDEMNITY OBLIGOR IS A PERSON OR ENTITY PROVIDING  
17 ARCHITECTURAL, ENGINEERING, SURVEYING, OR OTHER DESIGN SERVICES,  
18 THEN THE EXTENT OF AN INDEMNITY OBLIGOR'S OBLIGATION TO DEFEND,  
19 INDEMNIFY, OR HOLD HARMLESS AN INDEMNITY OBLIGEE MAY BE  
20 DETERMINED ONLY AFTER THE INDEMNITY OBLIGOR'S LIABILITY OR FAULT  
21 ~~■~~ HAS BEEN DETERMINED BY ADJUDICATION, ALTERNATIVE DISPUTE  
22 RESOLUTION, OR OTHERWISE RESOLVED BY MUTUAL AGREEMENT BETWEEN  
23 THE INDEMNITY OBLIGOR AND OBLIGEE.

24 **SECTION 2. Act subject to petition - effective date -**  
25 **applicability.** (1) This act takes effect September 1, 2015; except that,  
26 if a referendum petition is filed pursuant to section 1 (3) of article V of  
27 the state constitution against this act or an item, section, or part of this act

1 within the ninety-day period after final adjournment of the general  
2 assembly, then the act, item, section, or part will not take effect unless  
3 approved by the people at the general election to be held in November  
4 2016 and, in such case, will take effect on the date of the official  
5 declaration of the vote thereon by the governor.

6 (2) This act applies to contracts or agreements entered into on or  
7 after the applicable effective date of this act.