**SB 304 Indemnity Agreements in Public Works Contracts – Please Support SB 304**

**Background:** In 2019, the Indiana General Assembly passed SEA 230 (PL 65-2019) to provide fairness to Design Professionals when they have done nothing wrong in the performance of their services.

The law (IC 26-2-5-4) applied to all provisions in a contract between a design professional (i.e. Professional Engineer, Architect) and its client (public or private) that imposed a contractual “duty to defend” the client prior to any determination of negligence by the design professional. This law passed the Senate 38-9 on a bipartisan basis.

Unlike contractors, design professionals are unable to purchase general liability insurance that provides coverage for contractually assigned indemnification or duty to defend as a result of their professional services. The insurance product doesn’t exist in the marketplace. Design professionals’ professional liability insurance covers only liability resulting from their own negligent acts or omissions.

**Why SB 304 is needed now:** Despite the clear intention that PL 65-2019 was intended to cover all contracts between a design professional and client, contracts awarded by IDOA for Professional Services (i.e. Engineering and Architectural) still mandate a “duty to defend” the agency. Therefore, the design professional would still be required to pay for the agency’s defense cost up front/out of pocket through contractual mandate.

It has been argued it is unclear that PL 65-2019 applies to Public Works contracts because it is not specifically contained in the respective statutes governing State and Local contracts.

In light of the State’s immunity, IC 26-2-5-4 clearly doesn’t shift indemnification or duty to defend to the state. That result was never contemplated. The provision would apply to state contracts that seek to shift indemnification and/or duty to defend to the design professional from an entity that is immune from tort liability. Such provisions are boilerplate language in State contracts.

**What SB 304 does:** To make it clear that the law does apply to Public Works contracts, SB 304 links the new law contained in IC 26 to the Public Works statutes for contracts awarded Professional Design Services in State contracts.

**Please support SB 304!**

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