



American Council of Engineering Companies
Maryland

HB 681 Courts – Prohibited Indemnity and Defense Liability Agreements SUPPORT

ACEC/MD is a nonprofit association headquartered in Baltimore with over 90 multi-sized consulting engineering firms located throughout the state serving the public as well as private sectors. Forty five percent of ACEC/MD's members are certified minority or women-owned firms or small businesses. Member firms employ approximately 7000 employees and are responsible for the design of most of the area's infrastructure, environmental and building construction.

ABOUT THE BILL: After a claim is adjudicated, the insurance policy of the responsible party is normally expected to pay for the indemnity and defense costs. If there are multiple responsible parties, the insurers representing each party will normally negotiate an equitable distribution of the claim costs.

The members of ACEC/MD do not believe that expecting a design professional (engineering firm) to pay the indemnity and the defense costs of other parties in claims, where they bear no responsibility and are not the proximate cause of the injury or loss, should ever be considered an equitable allocation of risk.

Contracts for design professionals often include provisions that require the design professionals to assume the liability to indemnify and pay the defense costs of others prior to and without any finding of fault on the part of the design professional. The design professionals who refuse to accept these provisions are not selected.

Attached is an exhibit that explains why insurance underwriters are unwilling to pay for claims and legal expenses that are not attributed to some fault on the part of policy holder. If a design professional agrees to a contract with the provision in question they are exposed to significant uninsured liability. Such payments can adversely affect the profitability and eventual solvency.

The members of ACEC/MD believe the amendments in HB 681 are not unreasonable changes in public policy for Maryland.

These changes limit transferring liability to a design professional for claims it did not cause; however, the amendments do not inhibit the filing of claims, or limit the reasonable liability of those responsible, nor reduce the awards payable to any claimant.

Design professionals are willing to assume liability that can be attributed to their fault and that of their derivative parties, but have genuine concerns when contracts require indemnification or a duty to defend claims for which they are not the proximate cause of the loss, damage or expense.

Likewise, once fault is attributed, the design professional will assume the responsibility to reimburse legal fees and defense costs for which the design professional is found legally liable.

A favorable vote on HB 681 would be most appreciated