



American Council of Engineering Companies
Maryland

SB 189 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 (*i.e. engineering firm*) to pay all the indemnity and the defense costs of other parties in claims, when they bear no responsibility and are not the proximate cause of the injury or loss, should be considered an equitable allocation of risk.

SB 189 is needed because contracts for design professionals often include provisions that require 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. When design professionals, including small, minority and women owned firms, refuse to agree to these provisions, they are not selected to bid on those contracts.

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 holders. When a design professional agrees to a contract with the provision in question, they are exposed to significant uninsured liability. This liability can adversely affect the profitability and solvency of a small firm.

The amendments in SB 189 will preclude the assignment of liability to design professionals for injuries or damages for which they are not the proximate cause; however, they do not inhibit the filing of claims, or limit the reasonable liability of those responsible, nor would it reduce the awards payable to any claimant.

Design professionals are willing to assume liability that can be attributed to their fault 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.

However, if proximate cause is attributed to the design professional, they must and are willing to assume the liability to indemnify the claim and pay the appropriate defense costs.

A favorable vote on SB 189 would be appreciated.