



22 January 2024

The Honorable Delegate Joseline A. Pena-Melnyk  
Chair of the Health and Government Operations Committee  
Room 241  
House Office Building  
Annapolis, Maryland 21401

Re: Letter of Support for HB 289  
State Contracts – Prohibited Provisions

Dear Chair Pena-Melnyk and members of the Health and Government Operations Committee:

On behalf of AIA Maryland and the nearly 2,000 Architects we represent, we ask for your support of this bill that prohibits the state from entering contracts for professional services between the state and design professionals that requires the state to indemnify, defend or hold harmless another party.

Further we feel this prohibition should extend to other jurisdictional authorities and reciprocally we also believe the state should be prohibited from requiring designers to indemnify, defend or hold harmless their clients.

Other states have found this type of provision is against public policy. Some units of state government have amended their contracts to preclude this duty to defend language. This contract language potentially places design professionals in a position where they must defend a client regardless of their responsibility for a potential claim and in cases where they are not the party at fault.

This language is made even more difficult for design professionals because this kind of contracted liability is not insurable and ultimately the sole responsibility of the designer.

We support this because we believe that this legislation provides for more equity in the design professionals' contract with the various public, quasi-public and private clients who we serve throughout the state.

Further we believe this will help level the field for our small business, WBE and MBE members and small firm colleagues as these indemnity and defense liability requirements are typically passed

through agreements from prime to consultants. This pass through extends the unfair burden from the prime design professional to their consultants. This results in the onerous nature of these provisions being placed upon these small business WBE and MBE firms who have limited resources needed to meet these requirements.

AIA Maryland and its membership encourage steps to improve the quality of Maryland's built environment, eliminating these types of contract provisions are in the interest of good public policy. AIA Maryland is happy to support this bill.

Sincerely,

A handwritten signature in red ink, appearing to read 'L. Frank', with a long horizontal stroke extending to the right.

Laurence A. Frank, AIA  
Director, Past President, AIA Maryland