CHAPTER 93

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COURTS

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HOUSE BILL 15-1197

BY REPRESENTATIVE(S) Tate, Conti, Dore, Brown, Fields, Kagan, Lundeen, Roupe, Salazar, Windholz, Moreno, Pettersen, Priola, Hullinghorst;
also SENATOR(S) Jahn.

AN ACT

CONCERNING LIMITATIONS ON INDEMNITY OBLIGATIONS IN PUBLIC CONSTRUCTION CONTRACTS.

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

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

13-50.5-102. Right to contribution - contract or agreement provision to indemnify or hold harmless void against public policy. (8) (a) ~~In the event that a~~ ANY public contract or agreement for ~~the~~ ARCHITECTURAL, ENGINEERING, OR SURVEYING SERVICES; DESIGN; construction; alteration; repair; or maintenance of any building, structure, highway, bridge, viaduct, water, sewer, or gas distribution system, or other works dealing with construction, or any moving, demolition, or excavation connected with such construction THAT contains ~~any~~ A covenant, promise, agreement, or combination thereof to DEFEND, indemnify, or hold harmless any public entity IS ENFORCEABLE ONLY TO THE EXTENT AND FOR AN AMOUNT REPRESENTED BY THE DEGREE OR PERCENTAGE OF NEGLIGENCE OR FAULT ATTRIBUTABLE TO THE INDEMNITY OBLIGOR OR THE INDEMNITY OBLIGOR'S AGENTS, REPRESENTATIVES, SUBCONTRACTORS, OR SUPPLIERS. ANY SUCH COVENANT, PROMISE, AGREEMENT, OR COMBINATION THEREOF REQUIRING AN INDEMNITY OBLIGOR TO DEFEND, INDEMNIFY, OR HOLD HARMLESS ANY PUBLIC ENTITY from that public entity's own negligence ~~then such covenant, promise, agreement, or combination thereof~~ is void as against public policy and wholly unenforceable.

(b) This subsection (8) shall not apply to construction bonds, contracts of insurance, OR INSURANCE POLICIES THAT PROVIDE FOR THE DEFENSE, INDEMNIFICATION, OR HOLDING HARMLESS OF PUBLIC ENTITIES OR contract clauses regarding insurance. ~~or contract clauses regarding costs of defense of litigation arising out of the work or to any covenant, promise, agreement, or combination~~

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Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~thereof to indemnify or hold harmless a contracting party against claims arising out of the negligent acts of the indemnitor and its subcontractors in the performance of the work under the contract. However, no contracting party shall be required to indemnify or hold harmless from any liability or damages arising from the negligent acts of the indemnified party.~~ This subsection (8) is intended only to affect the contractual relationship between the parties relating to THE DEFENSE, indemnification, OR HOLDING HARMLESS of public entities, ~~for the negligent acts of the public entity,~~ and nothing in this subsection (8) shall affect any other rights or remedies of public entities or contracting parties.

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

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect September 1, 2015; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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

Approved: April 10, 2015