



HOUSE BILL 871: Fair Contracts.

2019-2020 General Assembly

Committee:	House Commerce. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 29, 2019
Introduced by:	Reps. Arp, Stevens, Reives, Floyd	Prepared by:	Erika Churchill
Analysis of:	PCS to First Edition H871-CSST-18		Staff Attorney

OVERVIEW: *The proposed committee substitute for House Bill 871 would establish as void and against public policy certain indemnification agreements relative to engineering, architectural, landscape architectural or surveying services. Effective October 1, 2019.*

CURRENT LAW: Any contract or agreement purporting to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence of the promisee, its independent contractors, agents, employees, or indemnitees, is against public policy and is void and unenforceable, if the contract or agreement is relative to the design, planning, construction, alteration, repair or maintenance of any of the following:

- Building
- Structure
- Highway
- Road
- Appurtenance or appliance, including moving, demolition and excavating connected therewith,

This prohibition does not prevent or prohibit a contract where a promisor agrees to indemnify or hold harmless any promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the sole negligence of the promisor, its agents or employees.

This prohibition does not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer.

This prohibition does not apply to any of the following:

1. Promises or agreements under which a public utility as defined in G.S. 62-3(23) including a railroad corporation as an indemnitee.
2. Contracts entered into by the Department of Transportation pursuant to G.S. 136-28.1.

BILL ANALYSIS: The PCS would establish a separate statement regarding the public policy for design and planning contracts. The PCS would establish as void and against public policy any contract agreement for engineering, architectural, landscape architectural or surveying services purporting to require that

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one party to the agreement indemnify, hold harmless, or defend the other party, its independent contractors, agents, employees, or any other person or entity. Exempt would be contract agreement providing only for indemnification for damages or expenses to the extent resulting from the negligence, recklessness, or intentionally wrongful conduct of the promisor, its employees, agents, or other persons utilized by the promisor in the performance of the contract.

The PCS would also make technical and conforming changes.

EFFECTIVE DATE: October 1, 2019, and applies to contracts entered into, renewed, or amended on or after that date.