

## Talking Points for House Bill 159 --“Fairness in Public Contracts”

- 1) The fundamental purpose of this bill is FAIRNESS. Right now, design professionals are being asked to defend public entities against third party claims BEFORE there is a determination that the design professional has committed error.
- 2) The costs of such defense can be staggering and are beyond the control of the design professional. These defense costs would come out of the design professionals’ pocket, and not from their professional liability insurance policy. Just like the presumption of innocence, a design professional should not be presumed responsible for a cost without a determination of wrong-doing.
- 3) Design professionals’ professional liability insurance will only cover legal costs to the extent caused by the negligent errors and omissions of the design professional. A design professional’s professional liability insurance policy does not provide defense for its clients.
- 4) Many of the design firms being required to sign these contracts are small Ohio-based companies and risk losing business if they refuse to accept an onerous indemnity obligation or in the alternative, take the work and subsequently have to pay for defense, even if they are found to have NOT been negligent.
- 5) ACEC Ohio is asking that the statute narrow (not eliminate) the obligation a design professional must shoulder to indemnify a public entity to just those situations where the design professional has been found to have committed an error.
- 6) The bill will help engineering consulting companies and architectural firms by eliminating unpredictable expenses, providing clarity and certainty when entering public contracts.
- 7) To date, eleven (11) states (Arizona, California, Colorado, Florida, Georgia, Indiana, Kansas, Maryland, Michigan, Minnesota, & Montana) have enacted statutes such as House Bill 554.

In summary, design professionals are required by common law to bear responsibility for damages caused by their own professional negligence. They carry professional liability insurance that will pay injured parties for precisely such damages. Moreover, Ohio public agencies currently have the authority to determine how much coverage must be carried by engineers and architects seeking to enter into agency contracts.

Design professionals, as a matter of basic fairness, should not be asked to indemnify and/or defend another party for losses that the designer did not cause, cannot insure against, and were caused by factors beyond the designer’s control.