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January 26, 2022

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

Re: SB0161 (HB0079) – Courts – Prohibited Indemnity Agreements and Defense Liability
Agreements – **Letter of Opposition**

The Office of the Attorney General urges the Judicial Proceedings Committee to unfavorably report Senate Bill 161

Senate Bill 161 shifts the risk within an Architectural or Engineering (“A/E”) contract from the hired design team to the State. The bill limits the State's ability to seek indemnification in only certain instances. Indemnification is already solely required in purchase orders over \$25,000. Indemnity is a negotiated provision that the State has available to it and is a legal and equitable remedy that, when negotiated will alleviate the State from having to pay out claims or damages that were not the State's fault, but the fault of the consultant/contractor/other party. In addition, the Department of General Services’ (“DGS”) current A/E contracts do not have an indemnification clause except for instances involving patents, copyright, and records; consequently, DGS did not have an indemnification clause in its prior A/E contracts and there have not been any issues with the A/E's. Because the Contract Litigation Unit within our Office represents and handles claims for DGS, SB 161 would, if passed, negatively impact that unit.

For all of the foregoing reasons, the Office of the Attorney General urges the Committee to unfavorably report Senate Bill 161.

cc: Senator West & Committee Members