



American Council of Engineering Companies  
Maryland

## **SB 161 Courts – Prohibited Indemnity and Defense Liability Agreements SUPPORT**

Chairman Smith, Vice Chairman Moon, and members of the Senate Judicial Proceedings Committee. My name is Sean McCone, Executive Vice President at Johnson, Mirmiran & Thompson, Inc., headquartered in Hunt Valley, Maryland. I am appearing here today as President of the American Council of Engineering Companies of Maryland in support of Senate Bill 161.

For the record, ACEC/MD is made up of 90 multi-sized consulting engineering firms located throughout the state serving both the public and private sectors. Many of our firms are engaged in the design of our public water and wastewater systems, bridges, highways, building structures and environmental projects. 45% of ACEC/MD's members are certified small, minority or women-owned businesses. Member firms employ approximately 7,000 employees statewide.

Design professionals should not be asked to indemnify 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. Unfortunately, some public authorities and private business entities are still putting indemnification clauses in their contracts that require a design professional to indemnify above and beyond what the design professionals' professional liability insurance will cover. When design professionals, including small, minority and women owned firms, refuse to agree to these provisions, they are not selected for these contracts.

The fundamental purpose of this bill is fairness, right now design professionals are being asked to defend public and private entities against third party claims before there is a proximate determination that the design professional has committed an error. The costs of such defense can be staggering and come out of the design professional's pockets, not their professional liability insurance policy. The reason being the professional liability insurance will only cover legal costs to the extent caused by the negligent errors and omissions of the design professional and does not provide defense for its client.

The amendments in SB 161 will preclude the assignment of liability to design professionals for injuries or damages for which they are not the proximate cause; however, they do not inhibit the filing of claims, or limit the reasonable liability of those responsible, nor would it reduce the awards payable to any claimant.

Design professionals are willing to assume liability that can be attributed to their fault but have genuine concerns when contracts require indemnification or a duty to defend claims for which they are not the proximate cause of the loss, damage, or expense.

A favorable vote on SB 161 would be appreciated. Thank you for allowing me to express our concerns and I will be pleased to answer questions and provide additional information.