

HOUSE BILL NO. 192

INTRODUCED BY W. STAHL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CONSTRUCTION CONTRACT MAY NOT  
5 CONTAIN AN INDEMNIFICATION CLAUSE REQUIRING ONE PARTY TO INDEMNIFY ANOTHER PARTY FOR  
6 ACTS OF A THIRD PARTY WHO IS IN PRIVITY ONLY WITH THE OTHER PARTY; PROVIDING THAT A  
7 CONSTRUCTION CONTRACT MAY CONTAIN AN INDEMNIFICATION CLAUSE REQUIRING A PARTY TO  
8 INDEMNIFY ANOTHER PARTY FOR ACTS COMMITTED BY A THIRD PARTY WHO IS IN PRIVITY ONLY  
9 WITH THE INDEMNIFYING PARTY; REVISING THE DEFINITION OF "CONSTRUCTION CONTRACT" TO  
10 INCLUDE CERTAIN LOANS, GRANTS, AND OTHER FINANCING AGREEMENTS ADMINISTERED BY A  
11 STATE AGENCY THAT ARE PROVIDED TO A LOCAL GOVERNMENT FOR CERTAIN SERVICES AND  
12 PROJECTS; AND AMENDING SECTION 28-2-2111, MCA."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 **Section 1.** Section 28-2-2111, MCA, is amended to read:  
17 **"28-2-2111. Construction contract indemnification provisions.** (1) Except as provided in subsections  
18 (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless,  
19 insure, or defend the other party to the contract or the other party's officers, employees, or agents or third parties  
20 who are in privity only with the other party for liability, damages, losses, or costs that are caused by the  
21 negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees,  
22 or agents or third parties who are in privity only with the other party is void as against the public policy of this  
23 state.

24 (2) A construction contract may contain a provision:  
25 (a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the  
26 contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but  
27 not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused  
28 by the negligence, recklessness, or intentional misconduct of a third party who is in privity only with the  
29 indemnifying party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or  
30 (b) requiring a party to the contract to purchase a project-specific insurance policy, including but not

1 limited to an owner's and contractor's protective insurance, a project management protective liability insurance,  
2 or a builder's risk insurance.

3 (3) This section does not apply to indemnity of a surety by a principal on a construction contract bond  
4 or to an insurer's obligation to its insureds.

5 (4) As used in this section, the following definitions apply:

6 (a) ~~"construction"~~ "Construction contract" means:

7 (i) an agreement for architectural services, alterations, construction, demolition, design services,  
8 development, engineering services, excavation, maintenance, repair, or other improvement to real property,  
9 including any agreement to supply labor, materials, or equipment for an improvement to real property; and

10 (ii) loans, grants, and other financing agreements administered by a state agency that are provided to  
11 a local government for the types of services and projects listed in subsection (4)(a)(i).

12 (b) "Privity" means mutuality of interest."

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