

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington St., Suite 301
Indianapolis, IN 46204
(317) 233-0696
iga.in.gov

FISCAL IMPACT STATEMENT

LS 6433

BILL NUMBER: SB 304

NOTE PREPARED: Feb 8, 2021

BILL AMENDED: Feb 8, 2021

SUBJECT: Indemnity Agreements in Public Works Contracts.

FIRST AUTHOR: Sen. Messmer

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill provides that a statute that invalidates indemnity agreements in construction contracts relating to providing certain professional services is applicable to such contracts relating to public works projects. It provides that a specified chapter does not apply to: (1) projects covered by INDOT's contractor qualification statute; or (2) a project that is the construction, improvement, alteration, repair, or maintenance of a highway, street, or road. It defines certain terms.

Effective Date: July 1, 2021.

Explanation of State Expenditures: The bill could increase expenditures by increasing state agencies' potential liability on professional services contracts for public works projects. By specifying that IC 26-2-5-4 applies to public works contracts, the bill would prohibit a professional (design professional, architect, engineer, surveyor, etc.) from being required to indemnify a public agency from certain liability and from being required to defend a public agency against a professional liability claim. A design professional would only be required to cover its proportion of the fault. The Attorney General's workload and expenditures could increase by being required to defend public agencies against professional liability claims.

The bill applies to all state agencies, state educational institutions, and bodies corporate and politic created by statute. The bill does not apply to judicial or legislative departments or the Indiana Department of Transportation.

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) The bill applies to counties, municipalities, townships,

school corporations, certain conservancy districts, fire protection districts, departments of aviation, and airport authorities, but does not apply to a highway, street, road, or railroad project. [See *Explanation of State Expenditures* for further information regarding the bill's impacts to public agencies.]

Explanation of Local Revenues:

State Agencies Affected: Attorney General, state agencies, state educational institutions, and bodies corporate and politic created by statute.

Local Agencies Affected: Counties, municipalities, townships, school corporations, certain conservancy districts, fire protection districts, departments of aviation, and airport authorities.

Information Sources: https://www.in.gov/idoa/files/standard_contract_language_designer_agreement.pdf;
<https://www.in.gov/idoa/2484.htm>

Fiscal Analyst: Heather Puletz, 317-234-9484.