



2023 SENATE BILL 491

October 16, 2023 - Introduced by Senators WIMBERGER, MARKLEIN, PFAFF and SPREITZER, cosponsored by Representatives DALLMAN, STEFFEN, ROZAR, BRANDTJEN, CONSIDINE, DUCHOW, JOERS, NOVAK, SCHMIDT and STUBBS. Referred to Committee on Transportation and Local Government.

1 **AN ACT** *to create* 443.20 of the statutes; **relating to:** prohibiting certain
2 indemnification provisions in contracts relating to design professional services.

Analysis by the Legislative Reference Bureau

This bill prohibits the enforcement of any provision in a contract between the state or a political subdivision and a private entity that is engaged in design professional services that requires the private entity to indemnify or defend the state or a political subdivision. Under the bill, design professional services is defined to mean any service performed by a design professional and services performed by others that arise out of or are related to services performed by a design professional. The term “design professional” includes architects, engineers-in-training, landscape architects, professional engineers, professional land surveyors, and Wisconsin registered interior designers. The bill excepts from the prohibitions described above any provision in which a private entity’s indemnification obligation is limited to losses proximately caused by the negligent performance of design professional services by the private entity and does not exceed the proportion of a loss caused by the negligent performance and any provision required to be included in the state’s or a political subdivision’s contracts with the federal government.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 443.20 of the statutes is created to read:

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1 **443.20 Indemnification in civil contracts. (1)** In this section:

2 (a) “Civil contract” means any contractual agreement between the state or a
3 political subdivision and a private entity.

4 (b) “Design professional” means any of the following:

5 1. Architect.

6 2. Engineer-in-training.

7 3. Landscape architect.

8 4. Professional engineer.

9 5. Professional land surveyor

10 6. Wisconsin registered interior designer.

11 (c) “Design professional services” means any service performed by a design
12 professional and services performed by others that arise out of or are related to
13 services performed by a design professional, including the following:

14 1. Studies.

15 2. Planning.

16 3. Surveys.

17 4. Project management.

18 5. Traffic management.

19 6. Preparatory work.

20 **(2)** Notwithstanding s. 895.447, any provision of a civil contract containing any
21 of the following, explicitly or in effect, is void and unenforceable:

22 (a) A provision requiring a private entity performing design professional
23 services to indemnify the state or any political subdivision, except as provided in sub.

24 (3) (a).

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1 (b) A provision requiring a private entity performing design professional
2 services to defend the state or any political subdivision in any legal action.

3 (3) The limitations under sub. (2) (a) do not apply to any of the following:

4 (a) Indemnification provisions in any civil contract in which a private entity's
5 indemnification obligation is limited to losses proximately caused by the negligent
6 performance of design professional services by the private entity and does not exceed
7 the proportion of a loss caused by the negligent performance.

8 (b) Provisions required to be included in the state's or a political subdivision's
9 contracts with the federal government to the extent the provisions conflict with sub.
10 (2).

11 (4) Nothing in this section may be construed as a waiver of any immunity or
12 other limitation of liability described in this chapter or ch. 895.

13 **SECTION 2. Initial applicability.**

14 (1) This act first applies to a civil contract, as defined under s. 443.20 (1) (a),
15 entered into on the effective date of this subsection.

16 (END)