

Submitter: Jeremy Morris  
On Behalf Of:  
Committee: Senate Committee On Judiciary  
Measure: SB848

This bill changes the ability of local city and county agencies to negotiate duty to defend provisions in their contracts with Design Professionals. Currently most agencies require each party defend. If passed, this bill would remove the ability of parties to establish a contract that defines the upfront legal costs of design professionals to defend a local agency. The practical implication of this change will be to require contractors and owners to defend the liability of design professionals until a case is concluded. This is an unfair shifting of the legal burden. Not to mention, the design professional is most likely the reason the issue ended up in court. Most local agencies do not have the expertise to design large road/bridge projects. The design professional does have the ability to design large road/bridge projects. Current laws allow local agencies and design professional to share the responsibility and costs of defending each other.

Particularly egregious is that the contractors and owners will be required to front the cost for the design professionals' attorneys' fees if a case makes it to the court system. While the bill does allow for the other parties to recover the proportional amount of attorneys' fees at the end of the legal proceeding, the upfront costs for these fees could be substantial for cities and counties. The design professionals should be responsible for the costs to defend themselves against claims from the beginning and other parties to a construction agreement should be able to require this in their contracts.