

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

CHAPTER 238
SENATE BILL 1231

AN ACT

AMENDING SECTIONS 34-101, 34-226, 41-2503 AND 41-2586, ARIZONA REVISED
STATUTES; RELATING TO CONSTRUCTION INDEMNITY AGREEMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-101, Arizona Revised Statutes, is amended to
3 read:

4 34-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Agent":

7 (a) Means any county, city or town, or officer, board or commission of
8 any county, city or town, and irrigation, power, electrical, drainage, flood
9 protection and flood control districts, tax levying public improvement
10 districts and county or city improvement districts.

11 (b) Includes any county board of supervisors and any representative
12 authorized by an agent to act as an agent for the purpose of authorizing
13 necessary change orders to previously awarded contracts in accordance with
14 guidelines established by rule of the agent, including the board of
15 supervisors.

16 2. "Architect services" means those professional architect services
17 that are within the scope of architectural practice as provided in title 32,
18 chapter 1.

19 3. "Construction":

20 (a) Means the process of building, altering, repairing, improving or
21 demolishing any public structure or building or other public improvements of
22 any kind to any public real property.

23 (b) Does not include the routine operation, routine repair or routine
24 maintenance of existing facilities, structures, buildings or real property.

25 4. "Construction-manager-at-risk" means a project delivery method in
26 which:

27 (a) There is a separate contract for design services and a separate
28 contract for construction services, except that instead of a single contract
29 for construction services, the agent may elect separate contracts for
30 preconstruction services during the design phase, for construction during the
31 construction phase and for any other construction services.

32 (b) The contract for construction services may be entered into at the
33 same time as the contract for design services or at a later time.

34 (c) Design and construction of the project may be either:

35 (i) Sequential with the entire design complete before construction
36 commences.

37 (ii) Concurrent with the design produced in two or more phases and
38 construction of some phases commencing before the entire design is complete.

39 (d) Finance services, maintenance services, operations services,
40 preconstruction services and other related services may be included.

41 5. "Construction services" means either of the following for
42 construction-manager-at-risk, design-build and job-order-contracting project
43 delivery methods:

44 (a) Construction, excluding services, through the
45 construction-manager-at-risk or job-order-contracting project delivery
46 methods.

1 (b) A combination of construction and, as elected by the agent, one or
2 more related services, such as finance services, maintenance services,
3 operations services, design services and preconstruction services, as those
4 services are authorized in the definitions of construction-manager-at-risk,
5 design-build or job-order-contracting in this section.

6 6. "Contract" means all types of agent agreements, regardless of what
7 they are called, for the procurement of services pursuant to this title.

8 7. "Contractor" means any person who has a contract with an agent.

9 8. "Design-bid-build" means a project delivery method in which:

10 (a) There is a sequential award of two separate contracts.

11 (b) The first contract is for design services.

12 (c) The second contract is for construction.

13 (d) Design and construction of the project are in sequential phases.

14 (e) Finance services, maintenance services and operations services are
15 not included.

16 9. "Design-build" means a project delivery method in which:

17 (a) There is a single contract for design services and construction
18 services, except that instead of a single contract for design services and
19 construction services, the agent may elect separate contracts for
20 preconstruction services and design services during the design phase, for
21 construction and design services during the construction phase and for any
22 other construction services.

23 (b) Design and construction of the project may be either:

24 (i) Sequential with the entire design complete before construction
25 commences.

26 (ii) Concurrent with the design produced in two or more phases and
27 construction of some phases commencing before the entire design is complete.

28 (c) Finance services, maintenance services, operations services,
29 preconstruction services and other related services may be included.

30 **10. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM THAT IS**
31 **REGISTERED BY THE STATE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32,**
32 **CHAPTER 1 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE**
33 **ARCHITECTURE OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND**
34 **PERSONS EMPLOYED BY THE REGISTERED INDIVIDUAL OR FIRM.**

35 ~~10.~~ 11. "Design requirements":

36 (a) Means at a minimum the agent's written description of the project
37 or service to be procured, including:

38 (i) The required features, functions, characteristics, qualities and
39 properties.

40 (ii) The anticipated schedule, including start, duration and
41 completion.

42 (iii) The estimated budgets applicable to the specific procurement for
43 design and construction and, if applicable, for operation and maintenance.

44 (b) May include:

45 (i) Drawings and other documents illustrating the scale and
46 relationship of the features, functions and characteristics of the project,

1 which shall all be prepared by ~~an architect or engineer, as appropriate,~~ A
2 DESIGN PROFESSIONAL who is registered pursuant to section 32-121.

3 (ii) Additional design information or documents that the agent elects
4 to include.

5 ~~11.~~ 12. "Design services" means architect services, engineer services
6 or landscape architect services.

7 ~~12.~~ 13. "Direct selection" means the selection of a technical
8 registrant without the requirement of advertising or the use of a current
9 register.

10 ~~13.~~ 14. "Engineer services" means those professional engineer services
11 that are within the scope of engineering practice as provided in title 32,
12 chapter 1.

13 ~~14.~~ 15. "Finance services" means financing for a construction services
14 project.

15 ~~15.~~ 16. "Horizontal construction" means construction of highways,
16 roads, streets, bridges, canals, floodways, earthen dams, landfills, light
17 rail and airport runways, taxiways and aprons. For the purposes of this
18 paragraph, light rail does not include any related rail stations, maintenance
19 facilities or parking facilities.

20 ~~16.~~ 17. "Job-order-contracting" means a project delivery method in
21 which:

22 (a) The contract is a requirements contract for indefinite quantities
23 of construction.

24 (b) The construction to be performed is specified in job orders issued
25 during the contract.

26 (c) Finance services, maintenance services, operations services,
27 preconstruction services, design services and other related services may be
28 included.

29 ~~17.~~ 18. "Landscape architect services" means those professional
30 landscape architect services that are within the scope of landscape
31 architectural practice as provided in title 32, chapter 1.

32 ~~18.~~ 19. "Maintenance services" means routine maintenance, repair and
33 replacement of existing facilities, structures, buildings or real property.

34 ~~19.~~ 20. "Materials":

35 (a) Means all property, including equipment, supplies, printing,
36 insurance and leases of property.

37 (b) Does not include land, a permanent interest in land or real
38 property or leasing space.

39 ~~20.~~ 21. "Operations services" means routine operation of existing
40 facilities, structures, buildings or real property.

41 ~~21.~~ 22. "Person" means any corporation, business, individual, union,
42 committee, club, other organization or group of individuals.

43 ~~22.~~ 23. "Preconstruction services" means services and other activities
44 during the design phase.

45 ~~23.~~ 24. "Procurement":

1 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
2 any materials, services, construction or construction services.

3 (b) Includes all functions that pertain to obtaining any materials,
4 services, construction or construction services, including description of
5 requirements, selection and solicitation of sources, preparation and award of
6 contract and all phases of contract administration.

7 ~~24.~~ 25. "Public competition" means a competitive procurement process
8 pursuant to section 34-103, subsection G that includes advertising in a
9 public newspaper and a qualification-based selection process.

10 ~~25.~~ 26. "Services":

11 (a) Means the furnishing of labor, time or effort by a contractor or
12 subcontractor that does not involve the delivery of a specific end product
13 other than required reports and performance.

14 (b) Does not include employment agreements or collective bargaining
15 agreements.

16 ~~26.~~ 27. "Subcontractor" means a person who contracts to perform work
17 or render service to a contractor or to another subcontractor as a part of a
18 contract with an agent.

19 ~~27.~~ 28. "Technical registrant" means a person who provides any of the
20 professional services listed in title 32, chapter 1.

21 Sec. 2. Section 34-226, Arizona Revised Statutes, is amended to read:

22 ~~34-226.~~ State preemption; indemnity agreements in construction
23 and design professional services contracts void;
24 definitions

25 ~~A. A covenant, clause or understanding in, collateral to or affecting~~
26 ~~a construction contract or subcontract or architect engineer professional~~
27 ~~service contract or subcontract that purports to indemnify, to hold harmless~~
28 ~~or to defend the promisee of, from or against liability for loss or damage~~
29 ~~resulting from the negligence of the promisee or the promisee's agents,~~
30 ~~employees or indemnitee is against the public policy of this state and is~~
31 ~~void.~~

32 A. THE REGULATION AND USE OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND
33 DESIGN PROFESSIONAL SERVICES CONTRACTS ARE OF STATEWIDE CONCERN. THE
34 REGULATION OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND DESIGN PROFESSIONAL
35 SERVICES CONTRACTS PURSUANT TO THIS SECTION AND THEIR USE ARE NOT SUBJECT TO
36 FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF
37 THIS STATE.

38 B. IF A CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL PROVIDES
39 WORK, SERVICES, STUDIES, PLANNING, SURVEYS OR OTHER PREPARATORY WORK IN
40 CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT, THE CONTRACTING AGENT MAY
41 REQUIRE THAT THE CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL
42 SERVICES CONTRACT OR SUBCONTRACT REQUIRE THE CONTRACTOR, SUBCONTRACTOR OR
43 DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE AGENT, AND ITS
44 OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS,
45 INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT
46 CAUSED BY THE NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF

1 SUCH CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL OR OTHER PERSONS
2 EMPLOYED OR USED BY SUCH CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL IN
3 THE PERFORMANCE OF THE CONTRACT OR SUBCONTRACT. A SUBCONTRACT OR DESIGN
4 PROFESSIONAL SERVICES SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC
5 BUILDING OR IMPROVEMENT MAY ALSO REQUIRE ANY SUBCONTRACTOR OR DESIGN
6 PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS THE AGENT AND THAT CONTRACTOR,
7 SUBCONTRACTOR, OR DESIGN PROFESSIONAL WHO EXECUTED THE SUBCONTRACT, AND THEIR
8 RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES
9 AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO
10 THE EXTENT CAUSED BY NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT
11 OF THE INDEMNIFYING SUBCONTRACTOR OR DESIGN PROFESSIONAL, OR OTHER PERSONS
12 EMPLOYED OR USED BY THE INDEMNIFYING SUBCONTRACTOR OR DESIGN PROFESSIONAL IN
13 CONNECTION WITH THE SUBCONTRACT. NOTHING IN THIS SECTION SHALL PROHIBIT THE
14 REQUIREMENT OF INSURANCE COVERAGE THAT COMPLIES WITH THIS SECTION, INCLUDING
15 THE DESIGNATION OF ANY PERSON AS AN ADDITIONAL INSURED ON A GENERAL LIABILITY
16 INSURANCE POLICY OR AS A DESIGNATED INSURED ON AN AUTOMOBILE LIABILITY POLICY
17 PROVIDED IN CONNECTION WITH A CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN
18 PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT.

19 C. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A CONSTRUCTION
20 CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES CONTRACT OR
21 SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC BUILDING OR IMPROVEMENT
22 SHALL NOT REQUIRE THAT THE CONTRACTOR, SUBCONTRACTOR OR DESIGN PROFESSIONAL
23 DEFEND, INDEMNIFY, INSURE OR HOLD HARMLESS THE CONTRACTING AGENT OR ITS
24 EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS OR SUBCONTRACTORS FROM
25 ANY LIABILITY, DAMAGE, LOSS, CLAIM, ACTION OR PROCEEDING, AND ANY CONTRACT
26 PROVISION THAT IS NOT PERMITTED BY SUBSECTION B OF THIS SECTION IS AGAINST
27 THE PUBLIC POLICY OF THIS STATE AND IS VOID.

28 ~~B.~~ D. Notwithstanding subsection ~~A~~ C OF THIS SECTION, a contractor
29 who is responsible for the performance of a construction contract or
30 subcontract may fully indemnify a person, firm, corporation, state or other
31 agency for whose account the construction contract or subcontract is not
32 being performed and ~~who~~ THAT, as an accommodation, enters into an agreement
33 with the contractor that permits the contractor to enter on or adjacent to
34 its property to perform the construction contract or subcontract for others.

35 E. IF ANY PROVISION OR CONDITION CONTAINED IN THIS SECTION CONFLICTS
36 WITH ANY PROVISION OF A CONTRACT BETWEEN THE STATE OR A POLITICAL SUBDIVISION
37 OF THE STATE AND THE FEDERAL GOVERNMENT, SUCH PROVISION OF THIS SECTION IN
38 CONFLICT SHALL NOT APPLY TO ANY CONSTRUCTION CONTRACT OR SUBCONTRACT, OR
39 DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT TO THE EXTENT SUCH
40 CONFLICT EXISTS, BUT ALL PROVISIONS OF THIS SECTION WITH WHICH THERE IS NO
41 SUCH CONFLICT SHALL APPLY.

42 ~~C.~~ F. ~~In~~ FOR THE PURPOSES OF this section:

43 ~~1. "Architect-engineer professional service contract or subcontract"~~
44 ~~means a written or oral agreement relating to the design, construction~~
45 ~~administration, study, evaluation or other professional services furnished in~~
46 ~~connection with any actual or proposed construction, alteration, repair,~~

1 ~~maintenance, moving, demolition or excavation of a structure, street or~~
2 ~~roadway, appurtenance or other development or improvement to land.~~

3 ~~2-~~ 1. "Construction contract or subcontract" means a written or oral
4 agreement relating to the construction, alteration, repair, maintenance,
5 RELOCATION, moving, demolition or excavation OF A STRUCTURE, STREET OR
6 ROADWAY, APPURTENANCE, FACILITY, ~~or other~~ development or OTHER improvement to
7 land.

8 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
9 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
10 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
11 SUPERVISION OF A DESIGN PROFESSIONAL OR THE BONA FIDE EMPLOYEES OF THE DESIGN
12 PROFESSIONAL.

13 3. "DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT" MEANS A
14 WRITTEN OR ORAL AGREEMENT RELATING TO THE PLANNING, DESIGN, CONSTRUCTION
15 ADMINISTRATION, STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING,
16 MAPPING, MATERIAL SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR
17 TECHNICAL SERVICES FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY,
18 PLANNING, SURVEY, ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT,
19 ALTERATION, REPAIR, MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION
20 OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, DEVELOPMENT OR
21 OTHER IMPROVEMENT TO LAND.

22 4. "OTHER PERSON EMPLOYED OR USED" MEANS A SUBCONTRACTOR TO A
23 CONTRACTOR OR DESIGN PROFESSIONAL IN ANY TIER, OR ANY OTHER PERSON OR ENTITY
24 WHO PERFORMS WORK OR DESIGN PROFESSIONAL SERVICES, OR PROVIDES LABOR,
25 SERVICES, MATERIALS OR EQUIPMENT IN CONNECTION WITH A CONSTRUCTION CONTRACT
26 OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICE CONTRACT OR SUBCONTRACT SUBJECT
27 TO THIS SECTION.

28 Sec. 3. Section 41-2503, Arizona Revised Statutes, is amended to read:
29 41-2503. Definitions

30 In this chapter, unless the context otherwise requires:

31 1. "Architect services" means those professional architect services
32 that are within the scope of architectural practice as provided in title 32,
33 chapter 1.

34 2. "Business" means any corporation, partnership, individual, sole
35 proprietorship, joint stock company, joint venture or other private legal
36 entity.

37 3. "Change order" means a written order ~~which~~ THAT is signed by a
38 procurement officer and ~~which~~ THAT directs the contractor to make changes
39 that the changes clause of the contract authorizes the procurement officer to
40 order.

41 4. "Construction":

42 (a) Means the process of building, altering, repairing, improving or
43 demolishing any public structure or building or other public improvements of
44 any kind to any public real property.

45 (b) Does not include:

1 (i) The routine operation, routine repair or routine maintenance of
2 existing facilities, structures, buildings or real property.

3 (ii) The investigation, characterization, restoration or remediation
4 due to an environmental issue of existing facilities, structures, buildings
5 or real property.

6 5. "Construction-manager-at-risk" means a project delivery method in
7 which:

8 (a) There is a separate contract for design services and a separate
9 contract for construction services, except that instead of a single contract
10 for construction services, the purchasing agency may elect separate contracts
11 for preconstruction services during the design phase, for construction during
12 the construction phase and for any other construction services.

13 (b) The contract for construction services may be entered into at the
14 same time as the contract for design services or at a later time.

15 (c) Design and construction of the project may be either:

16 (i) Sequential with the entire design complete before construction
17 commences.

18 (ii) Concurrent with the design produced in two or more phases and
19 construction of some phases commencing before the entire design is complete.

20 (d) Finance services, maintenance services, operations services,
21 preconstruction services and other related services may be included.

22 6. "Construction services" means either of the following for
23 construction-manager-at-risk, design-build and job-order-contracting project
24 delivery methods:

25 (a) Construction, excluding services, through the
26 construction-manager-at-risk or job-order-contracting project delivery
27 methods.

28 (b) A combination of construction and, as elected by the purchasing
29 agency, one or more related services, such as finance services, maintenance
30 services, operations services, design services and preconstruction services,
31 as those services are authorized in the definitions of
32 construction-manager-at-risk, design-build or job-order-contracting in this
33 section.

34 7. "Contract" means all types of state agreements, regardless of what
35 they may be called, for the procurement of materials, services, construction,
36 construction services or the disposal of materials.

37 8. "Contract modification" means any written alteration in the terms
38 and conditions of any contract accomplished by mutual action of the parties
39 to the contract.

40 9. "Contractor" means any person who has a contract with a state
41 governmental unit.

42 10. "Data" means documented information, regardless of form or
43 characteristic.

44 11. "Department" means the department of administration.

45 12. "Design-bid-build" means a project delivery method in which:

46 (a) There is a sequential award of two separate contracts.

- 1 (b) The first contract is for design services.
- 2 (c) The second contract is for construction.
- 3 (d) Design and construction of the project are in sequential phases.
- 4 (e) Finance services, maintenance services and operations services are
- 5 not included.

6 13. "Design-build" means a project delivery method in which:

7 (a) There is a single contract for design services and construction

8 services, except that instead of a single contract for design services and

9 construction services, the purchasing agency may elect separate contracts for

10 preconstruction services and design services during the design phase, for

11 construction and design services during the construction phase and for any

12 other construction services.

13 (b) Design and construction of the project may be either:

14 (i) Sequential with the entire design complete before construction

15 commences.

16 (ii) Concurrent with the design produced in two or more phases and

17 construction of some phases commencing before the entire design is complete.

18 (c) Finance services, maintenance services, operations services,

19 preconstruction services and other related services may be included.

20 14. "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL OR FIRM THAT IS

21 REGISTERED BY THE STATE BOARD OF TECHNICAL REGISTRATION PURSUANT TO TITLE 32,

22 CHAPTER 1 TO PRACTICE ARCHITECTURE, ENGINEERING, GEOLOGY, LANDSCAPE

23 ARCHITECTURE OR LAND SURVEYING OR ANY COMBINATION OF THOSE PROFESSIONS AND

24 ANY PERSON EMPLOYED BY THE REGISTERED INDIVIDUAL OR FIRM.

25 ~~14.~~ 15. "Design requirements":

26 (a) Means at a minimum the purchasing agency's written description of

27 the project or service to be procured, including:

28 (i) The required features, functions, characteristics, qualities and

29 properties.

30 (ii) The anticipated schedule, including start, duration and

31 completion.

32 (iii) The estimated budgets applicable to the specific procurement for

33 design and construction and, if applicable, for operation and maintenance.

34 (b) May include:

35 (i) Drawings and other documents illustrating the scale and

36 relationship of the features, functions and characteristics of the project,

37 which shall all be prepared by ~~an architect or engineer, as appropriate,~~ A

38 DESIGN PROFESSIONAL who is registered pursuant to section 32-121.

39 (ii) Additional design information or documents that the purchasing

40 agency elects to include.

41 ~~15.~~ 16. "Design services" means architect services, engineer services

42 or landscape architect services.

43 ~~16.~~ 17. "Designee" means a duly authorized representative of the

44 director.

45 ~~17.~~ 18. "Director" means the director of the department of

46 administration.

1 ~~18.~~ 19. "Employee" means an individual drawing a salary from a state
2 governmental unit, whether elected or not, and any noncompensated individual
3 performing personal services for any state governmental unit.

4 ~~19.~~ 20. "Engineer services" means those professional engineer services
5 that are within the scope of engineering practice as provided in title 32,
6 chapter 1.

7 ~~20.~~ 21. "Finance services" means financing for a construction services
8 project.

9 ~~21.~~ 22. "General services administration contract" means contracts
10 awarded by the United States government general services administration.

11 ~~22.~~ 23. "Grant" means the furnishing of financial or other assistance,
12 including state funds or federal grant funds, by any state governmental unit
13 to any person for the purpose of supporting or stimulating educational,
14 cultural, social or economic quality of life.

15 ~~23.~~ 24. "Job-order-contracting" means a project delivery method in
16 which:

17 (a) The contract is a requirements contract for indefinite quantities
18 of construction.

19 (b) The construction to be performed is specified in job orders issued
20 during the contract.

21 (c) Finance services, maintenance services, operations services,
22 preconstruction services, design services and other related services may be
23 included.

24 ~~24.~~ 25. "Landscape architect services" means those professional
25 landscape architect services that are within the scope of landscape
26 architectural practice as provided in title 32, chapter 1.

27 ~~25.~~ 26. "Maintenance services" means routine maintenance, repair and
28 replacement of existing facilities, structures, buildings or real property.

29 ~~26.~~ 27. "Materials":

30 (a) Means all property, including equipment, supplies, printing,
31 insurance and leases of property.

32 (b) Does not include land, a permanent interest in land or real
33 property or leasing space.

34 ~~27.~~ 28. "Operations services" means routine operation of existing
35 facilities, structures, buildings or real property.

36 ~~28.~~ 29. "Owner" means a state purchasing agency or state governmental
37 unit.

38 ~~29.~~ 30. "Person" means any corporation, business, individual, union,
39 committee, club, other organization or group of individuals.

40 ~~30.~~ 31. "Preconstruction services" means services and other activities
41 during the design phase.

42 ~~31.~~ 32. "Procurement":

43 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
44 any materials, services, construction or construction services.

45 (b) Includes all functions that pertain to obtaining any materials,
46 services, construction or construction services, including description of

1 requirements, selection and solicitation of sources, preparation and award of
2 contract, and all phases of contract administration.

3 ~~32-~~ 33. "Procurement officer":

4 (a) Means any person duly authorized to enter into and administer
5 contracts and make written determinations with respect to the contracts.

6 (b) Includes an authorized representative acting within the limits of
7 the authorized representative's authority.

8 ~~33-~~ 34. "Purchasing agency" means any state governmental unit ~~which~~
9 THAT is authorized by this chapter or rules adopted pursuant to this chapter,
10 or by way of delegation from the director, to enter into contracts.

11 ~~34-~~ 35. "Services":

12 (a) Means the furnishing of labor, time or effort by a contractor or
13 subcontractor ~~which~~ THAT does not involve the delivery of a specific end
14 product other than required reports and performance.

15 (b) Does not include employment agreements or collective bargaining
16 agreements.

17 ~~35-~~ 36. "State governmental unit" means any department, commission,
18 council, board, bureau, committee, institution, agency, government
19 corporation or other establishment or official of the executive branch or
20 corporation commission of this state.

21 ~~36-~~ 37. "Subcontractor" means a person who contracts to perform work
22 or render service to a contractor or to another subcontractor as a part of a
23 contract with a state governmental unit.

24 ~~37-~~ 38. "Using agency" means any state governmental unit ~~which~~ THAT
25 utilizes any materials, services or construction procured under this chapter.

26 Sec. 4. Section 41-2586, Arizona Revised Statutes, is amended to read:

27 ~~41-2586.~~ State preemption; indemnity agreements in construction
28 and design professional services contracts void;
29 definitions

30 A. A covenant, clause or understanding in, collateral to or affecting
31 a construction contract or subcontract ~~or architect-engineer professional~~
32 ~~service contract or subcontract~~ that purports to indemnify, to hold harmless
33 or to defend the promisee of, from or against liability for loss or damage
34 resulting from the negligence of the promisee or the promisee's agents,
35 employees or indemnitee is against the public policy of this state and is
36 void.

37 B. THE REGULATION AND USE OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND
38 DESIGN PROFESSIONAL SERVICES CONTRACTS ARE OF STATEWIDE CONCERN. THE
39 REGULATION OF INDEMNITY AGREEMENTS IN CONSTRUCTION AND DESIGN PROFESSIONAL
40 SERVICES CONTRACTS PURSUANT TO THIS SECTION AND THEIR USE ARE NOT SUBJECT TO
41 FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF
42 THIS STATE.

43 C. IF A DESIGN PROFESSIONAL PROVIDES WORK, SERVICES, STUDIES,
44 PLANNING, SURVEYS OR OTHER PREPARATORY WORK IN CONNECTION WITH A PUBLIC
45 BUILDING OR IMPROVEMENT, THE STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT
46 OR PROPERTY OWNER MAY REQUIRE THAT THE DESIGN PROFESSIONAL SERVICES CONTRACT

1 OR SUBCONTRACT REQUIRE THE DESIGN PROFESSIONAL TO INDEMNIFY AND HOLD HARMLESS
2 THE STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT OR PROPERTY OWNER, AND
3 ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES AND COSTS,
4 INCLUDING REASONABLE ATTORNEY FEES AND COURT COSTS, BUT ONLY TO THE EXTENT
5 CAUSED BY THE NEGLIGENCE, RECKLESSNESS OR INTENTIONAL WRONGFUL CONDUCT OF
6 SUCH DESIGN PROFESSIONAL OR OTHER PERSONS EMPLOYED OR USED BY SUCH DESIGN
7 PROFESSIONAL IN THE PERFORMANCE OF THE CONTRACT OR SUBCONTRACT. A DESIGN
8 PROFESSIONAL SERVICES SUBCONTRACT ENTERED INTO IN CONNECTION WITH A PUBLIC
9 BUILDING OR IMPROVEMENT MAY ALSO REQUIRE ANY DESIGN PROFESSIONAL TO INDEMNIFY
10 AND HOLD HARMLESS THE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT, OR PROPERTY
11 OWNER AND THE INDEMNIFIED DESIGN PROFESSIONAL WHO EXECUTED THE SUBCONTRACT,
12 AND THEIR RESPECTIVE OWNERS, OFFICERS AND EMPLOYEES, FROM LIABILITIES,
13 DAMAGES, LOSSES AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AND COURT
14 COSTS, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS OR
15 INTENTIONAL WRONGFUL CONDUCT OF SUCH DESIGN PROFESSIONAL, OR PERSONS EMPLOYED
16 OR USED BY THE INDEMNIFYING DESIGN PROFESSIONAL IN CONNECTION WITH THE
17 SUBCONTRACT. NOTHING IN THIS SECTION SHALL PROHIBIT THE REQUIREMENT OF
18 INSURANCE COVERAGE THAT COMPLIES WITH THIS SECTION, INCLUDING THE DESIGNATION
19 OF THE STATE, STATE PURCHASING AGENCY, STATE GOVERNMENTAL UNIT OR PROPERTY
20 OWNER AS AN ADDITIONAL INSURED ON A GENERAL LIABILITY INSURANCE POLICY OR AS
21 A DESIGNATED INSURED ON AN AUTOMOBILE LIABILITY POLICY PROVIDED IN CONNECTION
22 WITH A CONSTRUCTION CONTRACT OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICES
23 CONTRACT OR SUBCONTRACT.

24 D. A COVENANT, CLAUSE OR UNDERSTANDING IN, COLLATERAL TO OR AFFECTING
25 A DESIGN PROFESSIONAL SERVICES SUBCONTRACT THAT PURPORTS TO INDEMNIFY, TO
26 HOLD HARMLESS OR TO DEFEND THE PROMISEE OF, FROM OR AGAINST LIABILITY FOR
27 LOSS OR DAMAGE RESULTING FROM THE NEGLIGENCE OF THE PROMISEE OR THE
28 PROMISEE'S AGENTS, EMPLOYEES OR INDEMNITEE IS AGAINST THE PUBLIC POLICY OF
29 THIS STATE AND IS VOID.

30 E. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, A DESIGN
31 PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT ENTERED INTO IN CONNECTION WITH
32 A PUBLIC BUILDING OR IMPROVEMENT SHALL NOT REQUIRE THAT A DESIGN PROFESSIONAL
33 DEFEND, INDEMNIFY, INSURE OR HOLD HARMLESS THE STATE PURCHASING AGENCY, STATE
34 GOVERNMENTAL UNIT OR PROPERTY OWNER OR ITS EMPLOYEES, OFFICERS, DIRECTORS,
35 AGENTS, CONTRACTORS OR SUBCONTRACTORS FROM ANY LIABILITY, DAMAGE, LOSS,
36 CLAIM, ACTION OR PROCEEDING, AND ANY CONTRACT PROVISION THAT IS NOT PERMITTED
37 BY SUBSECTION C OF THIS SECTION IS AGAINST THE PUBLIC POLICY OF THIS STATE
38 AND IS VOID.

39 ~~B-~~ F. Notwithstanding subsection A OF THIS SECTION, a contractor who
40 is responsible for the performance of a construction contract or subcontract
41 may fully indemnify a person, firm, corporation, state or other agency for
42 whose account the construction contract or subcontract is not being performed
43 and ~~who~~ THAT, as an accommodation, enters into an agreement with the
44 contractor that permits the contractor to enter on or adjacent to its
45 property to perform the construction contract or subcontract for others.

1 G. IF ANY PROVISION OR CONDITION CONTAINED IN THIS SECTION CONFLICTS
2 WITH ANY PROVISION OF A CONTRACT BETWEEN THE STATE OR A POLITICAL SUBDIVISION
3 OF THE STATE AND THE FEDERAL GOVERNMENT, SUCH PROVISION OF THIS SECTION IN
4 CONFLICT SHALL NOT APPLY TO ANY CONSTRUCTION CONTRACT OR SUBCONTRACT, OR
5 DESIGN PROFESSIONAL SERVICES CONTRACT OR SUBCONTRACT TO THE EXTENT SUCH
6 CONFLICT EXISTS, BUT ALL PROVISIONS OF THIS SECTION WITH WHICH THERE IS NO
7 SUCH CONFLICT, SHALL APPLY.

8 ~~C.~~ H. ~~In~~ FOR THE PURPOSES OF this section:

9 ~~1. "Architect engineer professional service contract or subcontract"~~
10 ~~means a written or oral agreement relating to the design, construction~~
11 ~~administration, study, evaluation or other professional services furnished in~~
12 ~~connection with any actual or proposed construction, alteration, repair,~~
13 ~~maintenance, moving, demolition or excavation of a structure, street or~~
14 ~~roadway, appurtenance or other development or improvement to land.~~

15 ~~2.~~ 1. "Construction contract or subcontract" means a written or oral
16 agreement relating to the construction, alteration, repair, maintenance,
17 RELOCATION, moving, demolition or excavation OF A STRUCTURE, STREET OR
18 ROADWAY, APPURTENANCE, FACILITY, ~~or other~~ development or OTHER improvement to
19 land.

20 2. "DESIGN PROFESSIONAL SERVICES" MEANS ARCHITECT SERVICES, ENGINEER
21 SERVICES, LAND SURVEYING SERVICES, GEOLOGIST SERVICES OR LANDSCAPE ARCHITECT
22 SERVICES OR ANY COMBINATION OF THOSE SERVICES PERFORMED BY OR UNDER THE
23 SUPERVISION OF A DESIGN PROFESSIONAL OR ANY PERSON EMPLOYED BY THE DESIGN
24 PROFESSIONAL.

25 3. "DESIGN PROFESSIONAL SERVICE CONTRACT OR SUBCONTRACT" MEANS A
26 WRITTEN OR ORAL AGREEMENT RELATING TO THE PLANNING, DESIGN, CONSTRUCTION
27 ADMINISTRATION, STUDY, EVALUATION, CONSULTING, INSPECTION, SURVEYING,
28 MAPPING, MATERIAL SAMPLING, TESTING OR OTHER PROFESSIONAL, SCIENTIFIC OR
29 TECHNICAL SERVICES FURNISHED IN CONNECTION WITH ANY ACTUAL OR PROPOSED STUDY,
30 PLANNING, SURVEY, ENVIRONMENTAL REMEDIATION, CONSTRUCTION, IMPROVEMENT,
31 ALTERATION, REPAIR, MAINTENANCE, RELOCATION, MOVING, DEMOLITION OR EXCAVATION
32 OF A STRUCTURE, STREET OR ROADWAY, APPURTENANCE, FACILITY, DEVELOPMENT OR
33 OTHER IMPROVEMENT TO LAND.

34 4. "OTHER PERSON EMPLOYED OR USED" MEANS A SUBCONTRACTOR TO A
35 CONTRACTOR OR DESIGN PROFESSIONAL IN ANY TIER, OR ANY OTHER PERSON OR ENTITY
36 WHO PERFORMS WORK OR DESIGN PROFESSIONAL SERVICES, OR PROVIDES LABOR,
37 SERVICES, MATERIALS OR EQUIPMENT IN CONNECTION WITH A CONSTRUCTION CONTRACT
38 OR SUBCONTRACT OR DESIGN PROFESSIONAL SERVICE CONTRACT OR SUBCONTRACT SUBJECT
39 TO THIS SECTION.

40 Sec. 5. Effective date

41 This act does not affect construction contracts or design professional
42 services contracts entered into before the effective date of this act, or
43 construction subcontracts or design professional services subcontracts
44 relating to construction contracts or design professional services
45 subcontracts entered into before the effective date of this act.

S.B. 1231

APPROVED BY THE GOVERNOR JUNE 20, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 20, 2013.