

Rep. Dallman: Authors “Duty to Defend” legislation

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Madison, WI — State Representative Alex Dallman (R-Green Lake) recently introduced Assembly Bill 514 (AB 514), which will protect private business from unreasonable government overreach. AB 514 ensures that contracts between design professionals and public entities include only reasonable and insurable clauses.

Design professionals, which include engineers, architects, land surveyors, and interior designers, are typically required under **public** contracts to indemnify, hold harmless, and defend their client, which may be the state or other local governing body. In these public contracts, private sector design professionals must defend the public sector governing body against all losses and expenses, including liability costs and attorney’s fees, for any claim or suit brought against that governing body. ‘Duty to Defend’ clauses force design professionals to pay for defense costs up front, and out of pocket, through contractual authorization.

As a matter of basic fairness, design professionals should not be asked to compensate and defend a public client for claims or losses that they did not cause, cannot insure against, or were caused by factors beyond their control. Under the bill, design professionals would continue to indemnify their client for their own failure and mistakes, but not the mistakes of others.

“Right now, duty to defend requirements are putting our local firms across the state at a high risk of bankruptcy because there is no way to insure against these claims,” said Representative Dallman.

In order to address one-sided contract clauses, AB 514 provides that design professionals must only indemnify a public entity in situations where the

professional has been found liable for their negligence. Significantly, contracts for services would continue to include a reasonable and insurable standard of care for professional services.

“This commonsense bill will protect our private sector design professionals from being unfairly burdened by our government. This bill will create more fair contracts between the public and private sectors and will encourage a process that is more principled and honest,” said Representative Dallman.