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# Wisconsin Legislative Council

## AMENDMENT MEMO

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**2023 Assembly Bill 514**

**Assembly Amendment 1, as Amended by Assembly Amendment 1**

### 2023 ASSEMBLY BILL 514

Beginning with contracts entered into after the bill takes effect, 2023 Assembly Bill 514 generally prohibits the state and local units of government from including either of the following types of provisions in contracts with private entities:

- A provision requiring a private entity performing design professional services<sup>1</sup> to indemnify the state or a local unit of government.
- A provision requiring a private entity performing design professional services to defend the state or a local unit of government in any legal action.

The bill provides two exceptions to those contracting prohibitions. First, with respect to the prohibition regarding indemnification requirements, the bill provides an exception for instances in which a private entity's indemnification obligation is limited to losses that: (1) are proximately caused by the negligent performance of design professional services by the private entity; and (2) do not exceed the proportion of loss caused by that negligent performance. Second, the bill provides an exception for instances in which a given contract term is required to be included in the state's or local unit of government's contracts with the federal government.

In addition, the bill provides that the contracting prohibitions described above may not be construed as a waiver of any immunity or other limitation of liability described in ch. 443 or 895, Stats.

### ASSEMBLY AMENDMENT 1, AS AMENDED BY ASSEMBLY AMENDMENT 1

Assembly Amendment 1, as amended, makes the following changes to the bill:

- Provides a third exception to the contracting prohibitions of the bill. With respect to the prohibition regarding indemnification requirements in a civil design contract, the amendment, as amended, provides an exception for instances in which a private entity's indemnification obligation is limited to damages caused by the private entity's acts or omissions if the acts or omissions involve reckless, wanton, or intentional misconduct.

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<sup>1</sup> The bill defines "design professional services" to mean: (a) services that are performed by an architect, engineer-in-training, landscape architect, professional engineer, professional land surveyor, or Wisconsin-registered interior designer; and (b) services performed by others that arise out of or are related to services performed by such individuals. Examples of design professional services enumerated by the bill include studies, planning, surveys, project management, traffic management, and preparatory work.

- Provides that the contracting prohibitions of the bill may not be construed as a waiver of any immunity or other limitation of liability described in ch. 893, Stats. (in addition to ch. 443 or 895).
- Provides that the contracting prohibitions of the bill may not be construed to prohibit the state or any local unit of government from requiring a private entity to provide proof of liability insurance as a condition of a contract.

## **BILL HISTORY**

Representative Dallman offered Assembly Amendment 1 on November 13, 2023, and offered Assembly Amendment 1 to Assembly Amendment 1 on November 14, 2023. On November 14, 2023, the Assembly adopted Assembly Amendment 1 to Assembly Amendment 1, and Assembly Amendment 1, as amended, each on a voice vote. The Assembly then passed the bill, as amended, on a voice vote.

For a full history of the bill, visit the Legislature's [bill history page](#).

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