

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

**BILL:** CS/SB 1964

**INTRODUCER:** Regulated Industries Committee and Senator Negron

**SUBJECT:** Design Professionals

**DATE:** March 25, 2010      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	<b>Fav/CS</b>
2.			JU	
3.			WPSC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The bill limits the tort liability of licensed engineers, surveyor and mappers, architects, and landscape architects (design professionals).

The bill limits tort claims for recovery of economic damages that may be filed by parties to a contract for the services of the design professionals. It eliminates causes of action in tort for professional negligence or professional malpractice in the performance of the professional services that are the subject of the contract.

To qualify for the tort liability limitation, the design professional must maintain, as specified in the design services contract, insurance covering the design professional's liability for the performance of the professional services rendered under the contract. Alternatively, the design professional must be protected by statutory liability limitations for public agencies and their employees. The bill also requires that the professional services contract must not purport to limit the liability of the design professional to less than the insurance coverage specified in the contract.

Under the bill, design professionals may be subject to professional negligence and malpractice causes of action if the claim relates to economic damages resulting from personal injury, the claim relates to damage to property that is not the subject of the contract, the contract or agreement were entered into before the effective date; or the professional services were performed before the effective date.

The bill provides an effective date of July 1, 2010.

This bill substantially amends section 725.08, Florida Statutes.

## II. Present Situation:

**Engineers** - Professional engineers are regulated by the Board of Professional Engineers within the Department of Business and Professional Regulation (department), which enforces and administers the provisions of ch. 471, F.S. Section 471.013(1), F.S., provides the following education and experience requirements for a person to qualify to take the examination for licensure as an engineer:

- Graduating from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board and has a record of 4 years of active engineering experience of a character indicating the competence to be in responsible charge of engineering;
- Graduating from an approved engineering technology curriculum of 4 years or more in a school, college, or university within the State University System, having been enrolled or having graduated prior to July 1, 1979, and having had a record of 4 years of active engineering experience of a character indicating competence to be in responsible charge of engineering; or
- Having, in lieu of the education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering.

**Engineer Liability** - Licensed engineers may practice through a business organization, including a partnership, corporation, or other legal entity offering such services. Section 471.023, F.S., establishes the liability of engineers when practicing through a business organization, including the liability partners in a partnership and of the business organization's officers, agents, or employees for negligence, misconduct, or wrongful acts. Section 471.023(3), F.S., provides that the "fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her."

With regard to the extent of a licensed engineer's liability for his or her own negligence, misconduct, or wrongful act while employed by a business organization, s. 471.023(3), F.S., also provides that:

Any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any

person under his or her direct supervision and control, while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

**Surveyors and Mappers** – Surveyors and mappers are regulated by the Board of Professional Surveyors and Mappers within the Department of Agriculture and Consumer Services, which enforces and administers the provisions of ch. 472, F.S.<sup>1</sup> Section 472.013(2), F.S., provides the following education and experience requirements for a person to qualify to take the examination for licensure as a surveyor and mapper:

- Receiving a degree in surveying and mapping of 4 years or more in a surveying and mapping degree program from a college or university recognized by the board and having a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.
- Being a graduate of a 4-year course of study, other than in surveying and mapping, at an accredited college or university and having a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 5 years of which of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.

**Surveyors and Mappers Liability** - Licensed surveyors and mappers may practice through a corporation or partnership. Section 472.021(3), F.S., establishes the liability of surveyors and mappers when practicing through a corporation or partnership. Section 472.021(3), F.S., provides “that any registered surveyor and mapper practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him or her.”

In regards to the extent of a licensed mapper and surveyor’s liability for his or her own negligence, misconduct, or wrongful act while employed by a business organization, s. 472.021(3), F.S., also provides that:

Any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control while rendering professional services on behalf of the business organization.

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<sup>1</sup> The regulation of surveyors and mappers was transferred from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services by ch. 2009-66, L.O.F.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

**Architects and Interior Designers** – Architects are regulated by the Board of Architecture and Interior Design within the department, which enforces and administers the provisions of part I of ch. 481, F.S. Section 481.209(1), F.S., provides the following education and experience requirements for a person to qualify to take the examination for licensure as an architect:

- Graduating from a school or college of architecture accredited by the National Architectural Accreditation Board, or from an approved architectural curriculum at an unaccredited school or college of architecture approved by the board; and
- Completing 1 year of the internship experience required by s. 481.211(1), F.S.

Section 481.209(2), F.S., provides the following education and experience requirements for a person to qualify to take the examination for licensure as an interior designer:

- Graduating from a board-approved interior design program of 5 years or more and completing 1 year of diversified interior design experience;
- Graduating from a board-approved interior design program of 4 years or more and completing 2 years of diversified interior design experience;
- Completing at least 3 years of a board-approved interior design curriculum and completing 3 years of diversified interior design experience; or
- Graduating from an interior design program of at least 2 years and completing 4 years of diversified interior design experience.

**Architects and Interior Designers Liability** – Section 481.219, F.S., provides that licensees may offer architecture and interior design services through a corporation, limited liability company, or partnership. Section 481.219(11), F.S., provides that the corporation, limited liability company, or partnership shall not be relieved of responsibility for the conduct or acts of its agents, employees, or officers.

In regards to the extent of a licensed architect's or interior designer's personal liability, s. 481.219(11), F.S., also provides that:

However, the architect who signs and seals the construction documents and instruments of service shall be liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed.

Section 481.219(11), F.S., also provides that corporations, limited liability companies, and partnerships are not relieved of responsibility for the conduct or acts of their agents, employees, or officers.

**Landscape Architects** – Landscape architects are regulated by the Board of Landscape Architecture within the department, which enforces and administers the provisions of part II of ch. 481, F.S. Section 481.309(1), F.S., provides the following education and experience requirements for a person to qualify to take the examination for licensure as a landscape architect:

- Completing a board-approved professional degree program in landscape architecture; or
- Having 6 years of actual practical experience in landscape architectural work of a grade and character satisfactory to the board.

**Landscape Architects Liability**– Section 481.319, F.S., provides that licensees may offer landscape architect services through a corporation or partnership. Section 481.319(6), F.S., provides that:

The fact that registered landscape architects practice landscape architecture through a corporation or partnership as provided in this section shall not relieve any landscape architect from personal liability for his or her professional acts.

**Design Professional Contracts** - Section 725.08(1), F.S., provides that a public agency:

may require in a professional services contract with the design professional that the design professional indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract.

Except as provided in s. 725.08(1), F.S., a professional services contract entered into with a public agency may not require that the design professional defend, indemnify, or hold harmless the agency, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding if the contract provision is void against the public policy of the state.<sup>2</sup>

Section 725.08, F.S., does not apply to contracts or agreements entered into before May 25, 2000.<sup>3</sup>

Section 725.08(3), F.S., defines a “professional services contract” to mean:

a written or oral agreement relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction, improvement, alteration, repair, maintenance, operation, management, relocation,

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<sup>2</sup> Section 725.08(2), F.S.

<sup>3</sup> Section 725.08(5), provides that this section does not affect contracts or agreements entered into before the effective date of this section. Section 725.08, F.S., was created in ch. 2000-162, L.O.F., which was approved by the Governor on May 25, 2000, and had an effective date of upon becoming law.

demolition, excavation, or other facility, land, air, water, or utility development or improvement.

Section 725.08(4), F.S., defines a “design professional” to mean:

an individual or entity licensed by the state who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture, under chapter 472 to practice land surveying and mapping, or under chapter 471 to practice engineering, and who enters into a professional services contract.

**Economic Loss Rule** - The economic loss rule is a court-created doctrine that generally bars a plaintiff with a tort claim, including negligence, from recovering monetary damages for economic loss or losses from a defendant with whom the plaintiff is not in a contractual relationship. A contractual relationship is known by the term “privity.” The rule establishes that, in the absence of privity, there is “no ‘duty to exercise reasonable care to avoid intangible economic loss or losses to others that do not arise from tangible physical harm to persons and tangible things.’”<sup>4</sup>

The Florida Supreme Court in *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc.*,<sup>5</sup> defined economic losses as “damages for inadequate value, costs of repair and replacement of the defective product, or consequent loss of profits-without any claim of personal injury or damage to other property.”<sup>6</sup> An economic loss includes “disappointed economic expectations,” i.e., the loss of the benefit of the bargain. Courts have found that such losses are more appropriately protected by contract law, rather than by tort law.<sup>7</sup> To recover damages under tort law, “there must be a showing of harm above and beyond disappointed expectations. A buyer's desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects.”<sup>8</sup>

In *Casa Clara*, the Florida Supreme Court applied the economic loss rule to bar a negligence claim<sup>9</sup> by homeowners against a concrete supplier with whom the homeowners were not in privity. The court held that “[i]f a house causes economic disappointment by not meeting a purchaser's expectations, the resulting failure to receive the benefit of the bargain is a core concern of contract, not tort, law.”<sup>10</sup> The court noted that there were other protections for homeowners, such as statutory warranties, the general warranty of habitability, the duty of sellers to disclose defects, the ability of purchasers to inspect houses for defects, and the homebuyers' power to bargain over price.<sup>11</sup>

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<sup>4</sup> *Bay Garden Manor Condo. Ass'n, Inc. v. James D. Marks Assocs., Inc.*, 576 So. 2d 744, 745 (Fla. 3d DCA 1991), quoting Prosser & Keeton, Law of Torts § 92, at 657 (5th ed. 1986).

<sup>5</sup> *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc.*, 620 So.2d 1244 (Fla. 1993).

<sup>6</sup> *Id.* at 1246, quoting *Economic Loss in Products Liability Jurisprudence*, 66 Colum.L.Rev. 917, 918 (1966).

<sup>7</sup> *Id.* at 1246.

<sup>8</sup> *Id.* at 1246, quoting *Redarowicz v. Ohlendorf*, 92 Ill.2d 171, 65 Ill.Dec. 411, 414, 441 N.E.2d 324, 327 (1982).

<sup>9</sup> *Id.* In this case, the condominium association's claims against the defendant engineer included breach of common law implied warranty, products liability, negligence, and violation of the building code.

<sup>10</sup> *Id.* at 1247, citing *East River Steamship Corp. v. Transamerica Delaval, Inc.* 476 U.S. 858, 870 (1986).

<sup>11</sup> *Id.* at 1247.

The distinction between contract law and tort law is relevant to the remedies that can be attained. Tort law compensates people for personal injury or property damage caused by tortious conduct, without regard to contract. Contract law enforces expectancy interests created by an agreement between parties. Tort remedies may award plaintiffs greater damages and tort plaintiffs may be able to avoid the conditions of the contract,<sup>12</sup> while “contract principles [are] more appropriate than tort principles for resolving economic loss without an accompanying physical injury or property damage.”<sup>13</sup>

In regards to the different interests that tort law and contract are intended to protect, the Florida Supreme Court stated in *Casa Clara* that:

tort law was designed to protect the interest of society as a whole by imposing a duty of reasonable care to prevent property damage or physical harm to others, whereas contract law operates to protect the economic expectations of the contracting parties when a “product” is the object of the contract.<sup>14</sup>

**Application of the Economic Loss Rule to Claims Against Licensed Professionals - In *Moransais v. Heathman*,**<sup>15</sup> the Florida Supreme Court considered the application of the economic loss rule to a professional malpractice claim brought by a homeowner (plaintiff) against a licensed engineers (defendants) who made a pre-purchase inspection and allegedly failed to detect and disclose defects in the condition of the house. The plaintiff had contracted with a professional engineering corporation to perform the home inspection services and the contract did not name the defendants who actually conducted the inspection as parties to the contract.

The Court considered the following two questions:

1. Where a purchaser of a home contracts with an engineering corporation, does the purchaser have a cause of action for professional malpractice against an employee of the engineering corporation who performed the engineering services?
2. Does the economic loss rule bar a claim for professional malpractice against the individual engineer who performed the inspection of the residence where no personal injury or property damage resulted?

The Court held that home purchasers have a cause of action for professional malpractice against an employee of the engineering corporation who conducts a home inspection but with whom the home purchaser is not in privity of contract. Professional malpractice and negligence claims are not barred by the economic loss rule. The court’s holding was based on two principal reasons:

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<sup>12</sup> *Id.* at 1245, citing William L. Prosser, *The Borderland of Tort and Contract in Selected Topics on the Law of Torts*, 380, 425.

<sup>13</sup> *Florida Power & Light Co. v. Westinghouse Elec. Corp.*, 510 So.2d 899, 902 (Fla.1987).

<sup>14</sup> *Casa Clara* at 1236.

<sup>15</sup> *Moransais v. Heathman*, 744 So.2d 973 (Fla. 1999).

1. Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to the injured person.
2. The economic loss rule is not intended to apply to professionals who negligently perform their duties.

The court stated that Florida's common law provides persons who are:

injured by another's negligence may maintain an action against the other person based on that other person's violation of a duty of due care to the injured person. Further, where the negligent party is a professional, the law imposes a duty to perform the requested services in accordance with the standard of care used by similar professionals in the community under similar circumstances.<sup>16</sup>

In addition to Florida's common law, the court relied on the 4-year statute of limitations for professional malpractice in s. 95.11(4)(a), F.S., and on s. 621.07, F.S., which provides that professional employees of a corporation may be held individually liable for any negligence committed while rendering professional services, to support its finding that the fact that both of the engineer defendants were employees of a corporation did not shield them from liability.

The court found that engineers were professionals within the meaning of s. 95.11, F.S., noting that a profession is "any vocation requiring at a minimum a four-year college degree before licensing is possible in Florida."<sup>17</sup> The court also noted that ss. 471.023 and 621.07, F.S., indicate an intent to hold licensed engineers as professionals in a corporation or partnership personally liable for their negligent acts.

Regarding the economic loss rule, the court noted that the rule has not eliminated causes of action that are based upon torts that are independent of the contract.<sup>18</sup> It also held that the rule was not intended to bar well-established common law causes of action, such as those for neglect in providing professional services.<sup>19</sup>

The court stated that the rule was primarily intended to limit product liability claims of action, and that it should generally be limited to that context "or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis."<sup>20</sup>

Noting that actions against professionals often involve only economic loss without any personal or property damage, the court stated that extending the economic loss rule to tort cases against professionals "would effectively extinguish such causes of action."<sup>21</sup>

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<sup>16</sup> *Id.* at 975, 976.

<sup>17</sup> *Id.* at 976, citing *Garden v. Frier*, 602 So.2d 1273, 1275 (Fla.1992).

<sup>18</sup> *Id.* at 981, citing *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So.2d 1238 (Fla.1996).

<sup>19</sup> *Id.* at 983.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

In *Witt v. La Gorge Country Club, Inc.*,<sup>22</sup> the Third District Court of Appeals relied on the holding in *Moransais* to reject the application of the economic loss rule to a professional malpractice claim against a licensed professional geologist.

In *Witt*, the plaintiff La Gorge Country Club, Inc., entered into a design-build contract for a reverse osmosis system with ITT Industries, Inc. (ITT), and Gerald M. Witt and Associates, Inc. (GMWA), which was the company of the defendant professional geologist Gerald M. Witt (Witt). The contract provided a limitation of liability and Witt in his individual capacity was not a party to the contract. The reverse osmosis system ultimately failed after numerous technical problems during the design and building of the system, and the plaintiff filed suit.<sup>23</sup>

Regarding the malpractice claim against Witt, the Third District Court of Appeals refused to apply the economic loss rule to bar the claim. The court relied on the holding in *Moransais*, and also noted that, as a professional geologist, Witt was specifically subject to personal liability for negligence, misconduct, or wrongful acts under s. 492.111, F.S.

In refusing to apply the economic loss rule to limit Witt's liability, the court noted that:

claims of professional negligence operate outside of the contract. Because a professional negligence claim exists and operates outside of a professional services contract, it would be inapposite to limit such a remedy to the confines of the very document outside of which it was intended to operate.<sup>24</sup>

### III. Effect of Proposed Changes:

The bill creates a new subsection (3) of s. 725.08, F.S., to limit the tort liability of design professionals. The design professionals affected by the bill are licensed engineers, surveyor and mappers, architects, and landscape architects.

The bill limits the potential tort claims for recovery of economic damages that may be filed by parties to a contract for the services of the design professionals. It eliminates causes of action in tort for professional negligence or professional malpractice in the performance of the professional services that are the subject of the professional services contract.

To qualify for the tort liability limitation, the design professional must maintain, as specified in the design services contract, insurance covering the design professional's liability for the performance of the professional services rendered under the contract. Alternatively, the design professional must be protected by statutory liability limitations for public agencies and their employees.

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<sup>22</sup> *Witt v. La Gorge Country Club, Inc.*, 2009 WL 1606437 (Fla. 3rd DCA 2009).

<sup>23</sup> The claims against Gerald M. Witt (Witt), the defendant professional geologist, and his codefendant corporations included: 1) fraud in the inducement against codefendant ITT Industries, Inc. (ITT), 2) aiding and abetting fraud in the inducement by Witt and his company Gerald M. Witt and Associates, Inc. (GMWA), 3) violation of the Florida Deceptive and Unfair Trade Practices Act in ss. 501.201-501.213, F.S., by ITT and GMWA, 4) professional malpractice by Witt and GMWA, and 5) breach of the contract by GMWA. *Witt* at 2.

<sup>24</sup> *Witt* at 4.

The required liability insurance is for the design professional's performance of the professional services rendered under the contract. Because the insured design professional would not be liable for tort claims, as provided in the bill, the insured liability would be limited to amount of liability provided under the contract. To qualify for the tort liability limitation, the bill requires that the professional services contract must not purport to limit the liability of the design professional to less than the insurance coverage specified in the contract. However, the bill does not specify the amount of required insurance coverage. Under the bill, the amount of insurance coverage would be negotiated by the parties to the contract.

Under the bill, design professionals may be subject to professional negligence and malpractice causes of action if:

1. The claim relates to economic damages resulting from personal injury;
2. The claim relates to damage to property that is not the subject of the contract;
3. The contract or agreement was entered into before the effective date of the subsection; or
4. The professional services were performed before the effective date of the subsection.

The effect of the bill's tort liability limitation is to apply the economic loss rule to bar claims against the specified design professionals who provide design services that are the subject of a contract. Therefore, a party claiming a purely economic loss based on a design service contract will not be able to bring a tort action based on malpractice or negligence against the contracted design professional. Instead, the injured party will be limited to bringing an action based on contract claims.

The limitation of tort liability applies to professional negligence or malpractice claims for services that are provided under a contract. The tort liability limitation applies whether or not the contract explicitly include the tort liability as a condition of the contract.

The tort liability limitation also applies whether or not the design professional rendered his services through a business organization, such as a corporation, partnership, or limited liability company. The tort liability limitation applies to design professionals, as defined in s. 725.08(4)(b), F.S., which includes licensed entities with a certificate of registration within the definition of the term "design professional." Under current law, engineers, surveyor and mappers, architects, and landscape architects may provide their services through a business organization, such as a partnership or corporation, and the business organization must have a certificate of authorization issued by the respective board.<sup>25</sup>

The bill does not amend the current liability provisions in s. 471.023(3), F.S., for engineers, s. 471.021(3), F.S., for surveyor and mappers, s. 481.219(11), F.S., for architects and interior designers, or s. 481.319(6), F.S., for landscape architects. It is not clear how the tort liability limitation created by the bill would affect the application of the liability provisions in those sections for each of the design professionals.

The bill provides an effective date of July 1, 2010.

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<sup>25</sup> See s. 471.021, F.S., relating to engineers, s. 472.023, F.S., relating to surveyor and mappers, s. 481.219, F.S., relating to architects, and s. 481.319, F.S., relating to landscape designers.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article I, s. 21 of the Florida Constitution provides the constitutional right of access to court. It provides:

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

In *Johnson v. R. H. Donnelly Company*,<sup>26</sup> the Florida Supreme Court held that the constitutional right of “accesses to courts guarantees the continuation of common law causes of action and those causes of action may be altered only if there is a reasonable substitution which protects the persons protected by the common law remedy.” In *Kluger v. White*,<sup>27</sup> the Florida Supreme Court also held that the Legislature cannot abolish a common law cause of action “unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.”

In *Moransais v. Heathman*,<sup>28</sup> the Florida Supreme Court stated that Florida’s common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional’s violation of a duty of care to injured persons. By limiting such claims against licensed engineers, surveyor and mappers, architects, and landscape architects, the bill may implicate concerns relating to the constitutional right of access to courts to the extent that the bill limits causes of actions for professional negligence and professional malpractice.

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<sup>26</sup> *Johnson v. R. H. Donnelly Company*, 402 So.2d 518 (Fla. 1981).

<sup>27</sup> *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

<sup>28</sup> *Moransais v. Heathman*, 744 So.2d 973, 975, 976 (Fla. 1999).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill limits the tort claims for economic losses that are based upon professional negligence and professional malpractice against licensed engineers, surveyor and mappers, architects, and landscape architects (design professionals). The design professionals effected by the bill may see lower costs for professional liability insurance and may assess lower prices to their customers for their services.

Correspondingly, persons who experience an economic loss that may be attributable to the professional negligence or professional malpractice of a design professional injured persons may be limited to the often lower remedies available under contract law or may be barred completely from any recovery of damages.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Regulated Industries on March 24, 2010:**

The committee substitute (CS) does not create s. 471.046, F.S., relating to engineers, s. 472.0367, F.S., relating to surveyor and mappers, s. 481.23, F.S., relating to architects and interior designers, and s. 481.333, F.S., relating to landscape architects.

The CS amends S. 725.08, F.S., to limit the tort liability of design professionals, as defined in s. 725.08(4)(b), F.S. The CS affects the same design professionals as in the bill, except that interior designers licensed under part I of ch. 481, F.S., are not affected by the CS.

The CS also exempts from the tort liability limitation, a contract or an agreement that is entered into before the effective date; and the professional services that are performed

before the effective date. The CS applies the tort limitation to entities that are licensed to provide the professional design services.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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