WHO ARE WE?
An organization of 90 engineering & professional service firms in the State of Maryland

WHO DO WE REPRESENT?
Over 7,000 employees including:

- Engineers
- Architects
- Land Surveyors
- Scientists
- Technical Specialists
- Planners

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DUTY TO DEFEND - EQUITY AND FAIRNESS

CURRENT LAW
Makes it against public policy for certain construction related contracts to require one party to indemnify and/or defend another party against claims for bodily injury or property damage, if the injury or damage is caused by the sole negligence of the party seeking to enforce the contract obligation;

Limitations on existing law
- Only applies to scenarios where the party seeking indemnification is solely (100%) at fault for its own injuries. It does not extend to issues of joint/concurrent negligence – in many cases, there are multiple contributing factors and concurrent fault of multiple parties.
- One party may be required to pay all of the damages despite limited actual responsibility.
- Only applies to claims of bodily injury and property damage – silent as to economic losses / purely financial injury.

PROPOSED BILL
- Removes limitation of “sole” negligence, and instead focuses on “proximate” cause – making an indemnification obligation unenforceable and against public policy if the party seeking to be indemnified is the “proximate cause” of their own injury/damage.
- Adds further limitation for contracts with design professionals:
  - A design professional can not be required to assume an upfront duty to defend, or to pay legal fees and defense costs, for another party prior to disposition of the claim
  - However, an otherwise enforceable indemnity provision may include reimbursement and recovery of reasonable attorneys’ fees and defense costs where the design professional is determined to be the proximate cause of the claimed loss or damage.

PROXIMATE CAUSE
- Cause that is legally sufficient to result in liability
- Beyond proving actual cause in fact (i.e., the injuries/damage would not have occurred but for the negligent act or omission), “proximate cause” requires additional considerations such as foreseeability (i.e., whether injuries were a foreseeable result of the negligent conduct) and superseding acts or events, to establish the basis for liability.