

Indemnification Clauses: The Problem and Solution

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What is Indemnification?

- The action of compensating for loss or damage sustained; to save harmless; to secure against loss or damage
- Party A agrees to indemnify and to hold Party B harmless for all loss, liability, cost, expense, (including reasonable attorneys' fees) incurred in connection with any and all claims for property damage or personal or bodily injury occurring in or about the facilities

What's the Problem?

- Creation of unknown financial obligations
 - The government's liability is indefinite, indeterminate, or potentially unlimited.
- Violation of statutory and constitutional appropriations and anti-deficiency law
 - Government must have budget authority or “authority provided by law to incur financial obligations “
 - Government may not make payments or commit to make payments at some future time for goods or services unless there is enough money “in the bank” or appropriated funds

What's the Fix?

- Limit indemnification
 - Remove “open-ended indemnification”
 - Specify the amount of liability covered
 - Purchase special event insurance policies with limited liability coverage
 - Request specific appropriations from your Legislature to fund liability
 - BEFORE SIGNING THE CONTRACT