

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Brown offered the following:

Amendment (with title amendment)

Between line(s) 46 & 47, insert:

Section 1. Section 725.06, Florida Statutes, is amended to read:

725.06 Construction contracts; limitation on indemnification; agreements to insure.--

(1) Except as otherwise provided in paragraphs (a), (b), and (c), any portion of any agreement or contract for or in connection with, or any guarantee of or in connection with, any construction, alteration, repair, or demolition of a building, structure, appurtenance, or appliance, including moving and excavating associated therewith, between ~~an owner of real property and~~ an architect, engineer, general contractor, subcontractor, sub-subcontractor, or materialman or any combination thereof wherein any party referred to herein

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28 promises to have someone named an additional insured under his
29 or her insurance policy or to indemnify, defend, or hold
30 harmless another person or the other party to the agreement,
31 contract, or guarantee for liability or for damages to persons
32 or property caused in whole or in part by any act, omission, or
33 default of the person or party being indemnified indemnitee
34 arising from the contract or its performance, shall be void and
35 unenforceable as against public policy. However, this provision
36 shall not be construed to place limits on indemnity agreements
37 that are only between a general contractor and the owner of real
38 property as long as unless the contract contains a monetary
39 limitation on the extent of the indemnification that bears a
40 reasonable commercial relationship to the contract and is part
41 of the project specifications or bid documents, if any.
42 Notwithstanding the foregoing, the monetary limitation on the
43 extent of the indemnification provided to the owner of real
44 property by any party in privity of contract with such owner
45 shall not be less than \$1 million per occurrence, unless
46 otherwise agreed by the parties. However, such indemnification
47 shall not include claims of, or damages resulting from, gross
48 negligence or willful, wanton, or intentional misconduct of the
49 indemnitee or its officers, directors, agents, or employees, or
50 for statutory violation or punitive damages, except and to the
51 extent the statutory violation or punitive damages are caused by
52 or result from the negligent act, omission, or default of the
53 indemnitor or any of the indemnitor's contractors,
54 subcontractors, sub-subcontractors, materialmen, or agents of
55 any tier or their respective employees.

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56 (a) Indemnification provisions in any such agreements,
57 contracts, or guarantees may not require that the indemnitor
58 indemnify the indemnitee for damages to persons or property
59 caused in whole or in part by any act, omission, or default of a
60 party other than:

61 ~~1.(a)~~ The indemnitor; or

62 ~~2.(b)~~ Any of the indemnitor's contractors, subcontractors,
63 sub-subcontractors, materialmen, or agents of any tier or their
64 respective employees; ~~or~~

65 ~~(c) The indemnitee or its officers, directors, agents, or~~
66 ~~employees. However, such indemnification shall not include~~
67 ~~claims of, or damages resulting from, gross negligence, or~~
68 ~~willful, wanton or intentional misconduct of the indemnitee or~~
69 ~~its officers, directors, agents or employees, or for statutory~~
70 ~~violation or punitive damages except and to the extent the~~
71 ~~statutory violation or punitive damages are caused by or result~~
72 ~~from the acts or omissions of the indemnitor or any of the~~
73 ~~indemnitor's contractors, subcontractors, sub-subcontractors,~~
74 ~~materialmen, or agents of any tier or their respective~~
75 ~~employees.~~

76 (b)(2) A construction contract for a public agency or in
77 connection with a public agency's project may require a party to
78 that contract to indemnify and hold harmless the other party to
79 the contract, their officers and employees, from liabilities,
80 damages, losses and costs, including, but not limited to,
81 reasonable attorney's fees, to the extent caused by the
82 negligence, recklessness, or intentional wrongful misconduct of
83 the indemnifying party and persons employed or utilized by the

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84 indemnifying party in the performance of the construction
85 contract.

86 (c) Any portion of any agreement or contract for or in
87 connection with, or any guarantee of or in connection with, any
88 construction, alteration, repair, or demolition of a building,
89 structure, appurtenance, or appliance, including moving and
90 excavating associated therewith, between an entity regulated by
91 the Florida Public Service Commission and an architect,
92 engineer, general contractor, subcontractor, sub-subcontractor,
93 or materialman or any combination thereof wherein any party
94 referred to in this section promises to indemnify or hold
95 harmless the other party to the agreement, contract, or
96 guarantee for liability for damages to persons or property
97 caused in whole or in part by any negligent act, omission, or
98 default of the indemnitee arising from the contract or its
99 performance shall be void and unenforceable unless the contract
100 contains a monetary limitation on the extent of the
101 indemnification that bears a reasonable commercial relationship
102 to the contract and is part of the project specifications or bid
103 documents, if any. Notwithstanding the foregoing, the monetary
104 limitation on the extent of the indemnification provided to the
105 owner of real property by any party in privity of contract with
106 such owner shall not be less than \$1 million per occurrence,
107 unless otherwise agreed by the parties. Indemnification
108 provisions in any such agreements, contracts, or guarantees may
109 not require that the indemnitor indemnify the indemnitee for
110 damages to persons or property caused in whole or in part by any
111 act, omission, or default of a party other than:

112 1. The indemnitor;

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113 2. Any of the indemnitor's contractors, subcontractors,
114 sub-subcontractors, materialmen, or agents of any tier or their
115 respective employees; or

116 3. The indemnitee or its officers, directors, agents, or
117 employees. However, such indemnification shall not include
118 claims of, or damages resulting from, gross negligence, or
119 willful, wanton, or intentional misconduct of the indemnitee or
120 its officers, directors, agents, or employees, or for statutory
121 violation or punitive damages, except and to the extent the
122 statutory violation or punitive damages are caused by or result
123 from the acts or omissions of the indemnitor or any of the
124 indemnitor's contractors, subcontractors, sub-subcontractors,
125 materialmen, or agents of any tier or their respective
126 employees.

127 (2) If, as part of any agreement or contract for or in
128 connection with, or any guarantee of or in connection with, any
129 construction, alteration, repair, or demolition of a building,
130 structure, appurtenance, or appliance, including moving and
131 excavating associated with such activities, between or among an
132 architect, engineer, general contractor, subcontractor, sub-
133 subcontractor, or materialman or any combination of such
134 persons, a policy of insurance extends certain coverage rights
135 to an additional insured for liability arising out of the acts,
136 errors, or omissions of the named insured, such additional
137 insured coverage shall only provide liability protection to the
138 additional insured for the imputed or vicarious liability
139 imposed on the additional insured as a direct consequence of the
140 negligent acts or omissions of the named insured.

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141 (3) If a written contract requires a subcontractor, sub-
142 subcontractor, or materialman to provide a policy of insurance
143 or a certificate of insurance to a general contractor or
144 subcontractor extending specific coverage rights to an
145 additional insured:

146 (a) The general contractor or subcontractor may, at any
147 point prior to the date the subcontractor, sub-subcontractor, or
148 materialman commences work or delivers material to the project,
149 accept or reject the policy as being nonconforming.

150 (b) If not rejected, the general contractor or
151 subcontractor shall be deemed to have accepted the policy.

152 (c) The general contractor or subcontractor shall not use
153 the lack of conforming insurance as a reason to reject work
154 already completed by a subcontractor or a sub-subcontractor or
155 material already supplied by the materialman or to withhold
156 payment to the subcontractor, sub-subcontractor, or materialman
157 for work already completed or material already supplied ~~Except~~
158 ~~as specifically provided in subsection (2), a construction~~
159 ~~contract for a public agency or in connection with a public~~
160 ~~agency's project may not require one party to indemnify, defend,~~
161 ~~or hold harmless the other party, its employees, officers,~~
162 ~~directors, or agents from any liability, damage, loss, claim,~~
163 ~~action, or proceeding, and any such contract provision is void~~
164 ~~as against public policy of this state.~~

165 (4) This section does not affect any contracts,
166 agreements, or guarantees entered into before the effective date
167 of this section ~~or any renewals thereof.~~

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169 ===== T I T L E A M E N D M E N T =====

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170 Remove line(s) 11 & 12, and insert:
171 An act relating to construction contracts; amending s. 725.06,
172 F.S.; providing for agreements to insure; revising provisions
173 relating to indemnification; providing for the extension of
174 certain coverage rights to an additional insured and procedures
175 related thereto; deleting a provision relating to renewals of
176 contracts, agreements, or guarantees; amending s. 218.70, F.S.;
177 providing a popular
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