

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1235 Insurance under construction contracts
SPONSOR(S): Brown, Kallinger and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2284

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	8 Y, 0 N	Cheek	Schulte
2) Insurance		Cheek	Schulte
3) Business Regulation			
4)			
5)			

SUMMARY ANALYSIS

Chapter 725, F.S., deals with unenforceable contracts. One example of an unenforceable contract, as described in the current s. 725.06, F.S., is a construction contract that requires the general contractor, its employees, or agents to assume legal responsibility for personal or property damage that was not caused through its own negligence, recklessness, or intentional wrongful misconduct. Section 725.08, F.S., includes nearly identical language concerning contracts for professional services from architects, engineers, and design professionals.

The bill addresses the issues of contractual indemnification for another person's negligence and a subcontractor's failure to obtain insurance required by the contract between the general contractor and the subcontractor. The bill makes the following changes:

Contractual Indemnification: prohibits a general contractor from requiring indemnification from subcontractors for damages.

Insurance Certificates: provides that if the subcontractor begins to work before the general contractor reviews the certificate of insurance, and subsequently the general contractor finds that the subcontractor has not provided the proper insurance, the general contractor must still pay the subcontractor for the work.

There does not appear to be a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1235a.in.doc
DATE: April 8, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 725, F.S., deals with unenforceable contracts. One example of an unenforceable contract, as described in the current s. 725.06, F.S., is a construction contract that requires the general contractor, its employees, or agents to assume legal responsibility for personal or property damage that was not caused through its own negligence, recklessness, or intentional wrongful misconduct. Section 725.08, F.S., includes nearly identical language concerning contracts for professional services from architects, engineers, and design professionals.

Prior to the 2000 Legislative Session, s. 725.06, F.S., did allow, under narrow contract conditions, a public or private entity or owner to be indemnified against all liability, even if it shared responsibility for the damages caused. The only conditions under which such contracts, at the time, could be legal and valid were if the contract contained either a monetary limitation on the extent of the indemnification, or the public or private entity indemnified by the contract agreed to pay the contractor a specific sum or other consideration for the indemnification. These conditions had to be part of the project specifications or bid package, so that bidders would know in advance that indemnification would be expected of them.

CS/HB 1083 (chapter 2000-162, L.O.F.) created s. 725.08, F.S., to protect design professionals from contracts that required them to indemnify public agencies at fault, and CS/SB 220 (chapter 2000-372, L.O.F.) rewrote s. 725.06, F.S., to provide the same protections for construction contractors doing work for both public agencies and private owners. Both bills allowed indemnification clauses in contracts that protect the entity from liability caused, in whole or in part, by the contractor, his employees or agents, and by design professionals or persons employed by them.

Contractual Indemnification

In contracts between the owner of a private construction project and the general contractor, the owner may require the general contractor to indemnify the owner for damages and attorney's fees awarded by a court for the owner's negligent acts, regardless of whether the owner is partly at fault or solely at fault. The general contractor, in turn, includes similar provisions in its contracts with subcontractors. Such indemnification provisions are prohibited in contracts on construction projects owned by public entities. There are numerous scenarios where an owner can be solely at fault for property damage or personal injury resulting from an accident.

For example, a contractor is to perform renovation work at an industrial plant where there are hazardous chemicals, flammable/explosive liquids and gases, etc. The owner does not properly inform the contractor that these substances are present, or misinforms the contractor as to the properties of these substances, so the contractor performs an operation, such as welding, that sets off an explosion

or release of hazardous chemicals. Such an outcome is not only dangerous to employees of the contractor and the owner, but real world occurrences such as this have resulted in injuries and death to the general public living or working in the area surrounding the plant. Under current law, the owner would be indemnified by the general contractor and any subcontractors for all damages awarded to the affected parties, and could pay nothing for their negligence.

A simpler example would be that an owner, or agent of the owner, drives onto a construction project and causes an accident, resulting in property damage or personal injury. If the owner is sued, the general contractor and the subcontractors would be liable for the damages caused by the negligence of the owner.

The bill prohibits a general contractor from requiring indemnification from subcontractors for damages.

Insurance Certificates

All conscientious owners, general contractors, and subcontractors carry numerous kinds of insurance including workers' compensation, commercial liability, and others. In commercial construction, the insurance requirements for the general contractor and the subcontractors are clearly spelled out so the parties can compute their bids. Those insurance requirements are then included in the resulting contracts between the owner and general contractor, and the general contractor and the subcontractor. At some point upon signing a contract, sometimes before the work begins and sometimes after, the subcontractor provides a certificate of insurance to the general contractor listing the insurance provided by the subcontractor. The general contractor then reviews all documents, including the certificate of insurance, prior to paying the first invoice for each subcontractor.

This bill provides that if the subcontractor begins to work before the general contractor reviews the certificate of insurance, and subsequently the general contractor finds that the subcontractor has not provided the proper insurance, the general contractor must still pay the subcontractor for the work.

C. SECTION DIRECTORY:

Section 1: Amends section 725.016, F.S., relating to construction contracts and limitations on indemnification.

Section 2: Provides that the act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provision relating to insurance certificates may create costs to a general contractor when a subcontractor does not have the proper insurance. This includes the increased cost in hiring a subcontractor who does have proper insurance, having to pay a claim for a subcontractor who is not insured, or having to purchase insurance for the subcontractor that is not insured.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact on state or local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Subcommittee on Insurance Regulation adopted one amendment:

Amendment 1 clarifies that indemnification is allowed when an employee “below” the construction project is at fault.