

Bill No. CS for CS for SB 1724

Amendment No. ____ Barcode 205896

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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2	04/29/2003	1/WD/2R	
	03:52 PM	.	
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11 Senator Bennett moved the following amendment:

12
13 **Senate Amendment (with title amendment)**

14 On page 2, line 12,

15
16 insert:

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

19 725.06 Construction contracts; limitation on
20 indemnification; agreements to insure.--

21 (1) Except as otherwise provided in paragraphs (a),
22 (b), and (c), any portion of any agreement or contract for or
23 in connection with, or any guarantee of or in connection with,
24 any construction, alteration, repair, or demolition of a
25 building, structure, appurtenance, or appliance, including
26 moving and excavating associated therewith, between an ~~owner~~
27 ~~of real property and an~~ architect, engineer, general
28 contractor, subcontractor, sub-subcontractor, or materialman
29 or any combination thereof wherein any party referred to
30 herein promises to have someone named an additional insured
31 under his insurance policy, indemnify, defend or hold harmless

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1 ~~the other party to the agreement, contract, another person or~~
2 ~~party guarantee~~ for liability or for damages to persons or
3 property caused in whole or in part by any act, omission, or
4 default of the person or party indemnitee arising from the
5 ~~contract or its performance, being indemnified~~ shall be void
6 and unenforceable as against public policy. However, this
7 provision shall not be construed to place limits on indemnity
8 agreements that are only between a general contractor and the
9 owner of real property as long as unless the contract contains
10 a monetary limitation on the extent of the indemnification
11 that bears a reasonable commercial relationship to the
12 contract and is part of the project specifications or bid
13 documents, if any. Notwithstanding the foregoing, the monetary
14 limitation on the extent of the indemnification provided to
15 the owner of real property by any party in privity of contract
16 with such owner shall not be less than \$1 million per
17 occurrence, unless otherwise agreed by the parties. However,
18 such indemnification shall not include claims of, or damages
19 resulting from, gross negligence, or willful, wanton or
20 intentional misconduct of the indemnitee or its officers,
21 directors, agents or employees, or for statutory violations or
22 punitive damages except and to the extent the statutory
23 violation or punitive damages are caused by or result from the
24 negligent acts, omissions, or default of the indemnitor or any
25 of the indemnitor's contractors, subcontractors,
26 sub-subcontractors, materialmen, or agents of any tier or
27 their respective employees.

28 (a) Indemnification provisions in any such agreements,
29 contracts, or guarantees may ~~not~~ require that the indemnitor
30 indemnify the indemnitee for damages to persons or property
31 caused ~~in whole or in part~~ by any act, omission, or default of

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1 ~~a party other than:~~

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

3 ~~2.(b) Any of the indemnitor's contractors,~~

4 ~~subcontractors, sub-subcontractors, materialmen, or agents of~~
5 ~~any tier or their respective employees.;~~ ~~or~~

6 ~~(c) The indemnitee or its officers, directors, agents,~~

7 ~~or employees. However, such indemnification shall not include~~

8 ~~claims of, or damages resulting from, gross negligence, or~~

9 ~~willful, wanton or intentional misconduct of the indemnitee or~~

10 ~~its officers, directors, agents or employees, or for statutory~~

11 ~~violation or punitive damages except and to the extent the~~

12 ~~statutory violation or punitive damages are caused by or~~

13 ~~result from the acts or omissions of the indemnitor or any of~~

14 ~~the indemnitor's contractors, subcontractors,~~

15 ~~sub-subcontractors, materialmen, or agents of any tier or~~

16 ~~their respective employees.~~

17 ~~(b)(2)~~ A construction contract for a public agency or

18 in connection with a public agency's project may require a

19 party to that contract to indemnify and hold harmless the

20 other party to the contract, their officers and employees,

21 from liabilities, damages, losses and costs, including, but

22 not limited to, reasonable attorney's fees, to the extent

23 caused by the negligence, recklessness, or intentional

24 wrongful misconduct of the indemnifying party and persons

25 employed or utilized by the indemnifying party in the

26 performance of the construction contract.

27 ~~(c) Any portion of any agreement or contract for or in~~

28 ~~connection with, or any guarantee of or in connection with,~~

29 ~~any construction, alteration, repair, or demolition of a~~

30 ~~building, structure, appurtenance, or appliance, including~~

31 ~~moving and excavating associated therewith, between an entity~~

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1 regulated by the Florida Public Service Commission and an
2 architect, engineer, general contractor, subcontractor,
3 sub-subcontractor, or materialman or any combination thereof
4 wherein any party referred to herein promises to indemnify or
5 hold harmless the other party to the agreement, contract, or
6 guarantee for liability for damages to persons or property
7 caused in whole or in part by any negligent act, omission, or
8 default of the indemnitee arising from the contract or its
9 performance, shall be void and unenforceable unless the
10 contract contains a monetary limitation on the extent of the
11 indemnification that bears a reasonable commercial
12 relationship to the contract and is part of the project
13 specifications or bid documents, if any. Notwithstanding the
14 foregoing, the monetary limitation on the extent of the
15 indemnification provided to the owner of real property by any
16 party in privity of contract with such owner shall not be less
17 than \$1 million per occurrence, unless otherwise agreed by the
18 parties. Indemnification provisions in any such agreements,
19 contracts, or guarantees may not require that the indemnitor
20 indemnify the indemnitee for damages to persons or property
21 caused in whole or in part by any act, omission, or default of
22 a party other than:

- 23 1. The indemnitor;
24 2. Any of the indemnitor's contractors,
25 subcontractors, sub-subcontractors, materialmen, or agents of
26 any tier or their respective employees; or
27 3. The indemnitee or its officers, directors, agents,
28 or employees. However, such indemnification shall not include
29 claims of, or damages resulting from, gross negligence, or
30 willful, wanton or intentional misconduct of the indemnitee or
31 its officers, directors, agents or employees, or for statutory

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1 violation or punitive damages except and to the extent the
2 statutory violation or punitive damages are caused by or
3 result from the acts or omissions of the indemnitor or any of
4 the indemnitor's contractors, subcontractors,
5 sub-subcontractors, materialmen, or agents of any tier or
6 their respective employees.

7 (2) If, as part of any agreement or contract for or in
8 connection with, or any guarantee of or in connection with,
9 any construction, alteration, repair, or demolition of a
10 building, structure, appurtenance, or appliance, including
11 moving and excavating associated with such activities, between
12 or among an architect, engineer, general contractor,
13 subcontractor, sub-subcontractor, or materialman or any
14 combination of such persons, a policy of insurance extends
15 certain coverage rights to an additional insured for liability
16 arising out of the acts, errors, or omissions of the named
17 insured, such additional insured coverage shall only provide
18 liability protection to the additional insured for the imputed
19 or vicarious liability imposed on the additional insured as a
20 direct consequence of the negligent acts or omissions of the
21 named insured.

22 (3) If a written contract requires a subcontractor,
23 sub-subcontractor or materialman to provide a policy of
24 insurance or a certificate of insurance to a general
25 contractor or subcontractor, extending specific coverage
26 rights to an additional insured:

27 (a) The general contractor or subcontractor may at any
28 point prior to the date the subcontractor, sub-subcontractor
29 or materialman commences work or delivers material to the
30 project, accept or reject the policy as being nonconforming;

31 (b) If not rejected, the general contractor or

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1 subcontractor shall be deemed to have accepted the policy and;

2 (c) The general contractor or subcontractor shall not
3 use the lack of conforming insurance as a reason to reject
4 work already completed by a subcontractor, sub-subcontractor,
5 or material already supplied by the materialman, or withhold
6 payment to the subcontractor, sub-subcontractor or materialman
7 for work already completed or material already supplied Except
8 as specifically provided in subsection (2), a construction
9 contract for a public agency or in connection with a public
10 agency's project may not require one party to indemnify,
11 defend, or hold harmless the other party, its employees,
12 officers, directors, or agents from any liability, damage,
13 loss, claim, action, or proceeding, and any such contract
14 provision is void as against public policy of this state.

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

18
19 (Redesignate subsequent sections.)

20
21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 On page 1, lines 2-3, delete those lines

25
26 and insert:

27 An act relating to construction services;
28 amending s. 725.06, F.S.; providing that
29 limitations on promises to insure or obtain
30 insurance for certain parties to construction
31 contracts for certain actions apply except in

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the case of certain agreements between
contractors and property owners or agreements
involving regulated utilities; providing
conditions; providing exceptions; amending s.
218.70;