

Bill No. CS for CS for SB 1724, 1st Eng.

Amendment No. ____ Barcode 251488

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Bennett moved the following amendment:

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

14 On page 2, line 12,

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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 the party's insurance policy or to indemnify, defend, or

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1 hold harmless ~~another person or party~~ ~~the other party to the~~
2 ~~agreement, contract, or guarantee~~ for liability or for damages
3 to persons or property caused in whole or in part by any act,
4 omission, or default of the person or party being indemnified
5 ~~indemnitee arising from the contract or its performance~~, shall
6 be void and unenforceable as against public policy. However,
7 this provisions shall not be construed to place limits on
8 indemnity agreements that exist only between a general
9 contractor and the owner of real property as long as unless
10 the contract contains a monetary limitation on the extent of
11 the 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. However, such indemnification shall not include
19 claims of, or damages resulting from, gross negligence or
20 willful, wanton, or intentional misconduct of the indemnitee
21 or its officers, directors, agents, or employees, or for
22 statutory violations or punitive damages except if, and to the
23 extent that the statutory violation or punitive damages are
24 caused by or result from the negligent acts, omissions, or
25 default of the indemnitor or any of the indemnitor's
26 contractors, subcontractors, sub-subcontractors, materialmen,
27 or agents of any tier or 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 which 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
31 or its officers, directors, agents, or employees, or for

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1 statutory violation or punitive damages except if, and to the
2 extent that, the statutory violation or punitive damages are
3 caused by or result from the acts or omissions of the
4 indemnitor or any of the indemnitor's contractors,
5 subcontractors, sub-subcontractors, materialmen, or agents of
6 any tier or 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 provide
18 liability protection only to the additional insured for the
19 imputed or vicarious liability imposed on the additional
20 insured as a direct consequence of the negligent acts or
21 omissions of the 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 the policy is not rejected, the general

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

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

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

20
21 (Redesignate subsequent sections.)

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23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

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

27
28 and insert:

29 An act relating to construction services;
30 amending s. 725.06, F.S.; providing conditions,
31 limitations, and exceptions for construction

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1 contracts that limit indemnification; amending
2 s. 218.70,
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