

Bill No. SB 2284

Amendment No. 1 Barcode 872716

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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| | 05/01/2003 05:08 PM | . | |
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11 The Committee on Banking and Insurance recommended the
 12 following amendment:

14 **Senate Amendment**

15 Delete everything after the enacting clause

17 and insert:

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

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

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

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

29 (a) Indemnification provisions in any such agreements,
30 contracts, or guarantees may ~~not~~ require that the indemnitor
31 indemnify the indemnitee for damages to persons or property

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1 ~~caused in whole or in part by any act, omission, or default of~~
2 ~~a party other than:~~

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

4 ~~2.(b) Any of the indemnitor's contractors,~~
5 ~~subcontractors, sub-subcontractors, materialmen, or agents of~~
6 ~~any tier or their respective employees.~~ ~~† or~~

7 ~~(c) The indemnitee or its officers, directors, agents,~~
8 ~~or employees. However, such indemnification shall not include~~
9 ~~claims of, or damages resulting from, gross negligence, or~~
10 ~~willful, wanton or intentional misconduct of the indemnitee or~~
11 ~~its officers, directors, agents or employees, or for statutory~~
12 ~~violation or punitive damages except and to the extent the~~
13 ~~statutory violation or punitive damages are caused by or~~
14 ~~result from the acts or omissions of the indemnitor or any of~~
15 ~~the indemnitor's contractors, subcontractors,~~
16 ~~sub-subcontractors, materialmen, or agents of any tier or~~
17 ~~their respective employees.~~

18 ~~(b)(2)~~ A construction contract for a public agency or
19 in connection with a public agency's project may require a
20 party to that contract to indemnify and hold harmless the
21 other party to the contract, their officers and employees,
22 from liabilities, damages, losses and costs, including, but
23 not limited to, reasonable attorney's fees, to the extent
24 caused by the negligence, recklessness, or intentional
25 wrongful misconduct of the indemnifying party and persons
26 employed or utilized by the indemnifying party in the
27 performance of the construction contract.

28 (c) Any portion of any agreement or contract for or in
29 connection with, or any guarantee of or in connection with,
30 any construction, alteration, repair, or demolition of a
31 building, structure, appurtenance, or appliance, including

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

24 1. The indemnitor;
 25 2. Any of the indemnitor's contractors,
 26 subcontractors, sub-subcontractors, materialmen, or agents of
 27 any tier or their respective employees; or

28 3. The indemnitee or its officers, directors, agents,
 29 or employees. However, such indemnification shall not include
 30 claims of, or damages resulting from, gross negligence, or
 31 willful, wanton or intentional misconduct of the indemnitee or

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

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

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

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

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1 (b) If not rejected, the general contractor or
2 subcontractor shall be deemed to have accepted the policy and;

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

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

19 Section 2. This act shall take effect upon becoming a
20 law.

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