

By the Committee on Banking and Insurance; and Senators Dockery and Bennett

311-2323-04

1 A bill to be entitled
2 An act relating to construction contracts;
3 amending s. 725.06, F.S.; including promises to
4 insure or obtain insurance for certain parties
5 to construction contracts for certain actions
6 as void and unenforceable; providing
7 exceptions; providing for limited liability
8 protection for additional insured coverage
9 under certain agreements or contracts;
10 prohibiting a contractor or subcontractor from
11 withholding payment to certain subcontractors,
12 sub-subcontractors, or materialmen under
13 certain insurance policies under certain
14 circumstances; providing conditions; revising
15 application; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

30 (a) Indemnification provisions in any such agreements,
31 contracts, or guarantees may ~~not~~ require that the indemnitor

1 indemnify the indemnitee for damages to persons or property
2 caused ~~in whole or in part~~ by any act, omission, or default of
3 ~~a party other than:~~

4 1.(a) The indemnitor; or

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

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

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

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

1 building, structure, appurtenance, or appliance, including
2 moving and excavating associated therewith, between an entity
3 regulated by the Florida Public Service Commission and an
4 architect, engineer, general contractor, subcontractor,
5 sub-subcontractor, or materialman or any combination thereof
6 wherein any party referred to herein promises to indemnify or
7 hold harmless the other party to the agreement, contract, or
8 guarantee for liability for damages to persons or property
9 caused in whole or in part by any negligent act, omission, or
10 default of the indemnitee arising from the contract or its
11 performance, shall be void and unenforceable unless the
12 contract contains a monetary limitation on the extent of the
13 indemnification that bears a reasonable commercial
14 relationship to the contract and is part of the project
15 specifications or bid documents, if any. Notwithstanding the
16 foregoing, the monetary limitation on the extent of the
17 indemnification provided to the owner of real property by any
18 party in privity of contract with such owner shall not be less
19 than \$1 million per occurrence, unless otherwise agreed to by
20 the parties. Indemnification provisions in any such
21 agreements, contracts, or guarantees may not require that the
22 indemnitor indemnify the indemnitee for damages to persons or
23 property caused in whole or in part by any act, omission, or
24 default of a party other than:
25 1. The indemnitor;
26 2. Any of the indemnitor's contractors,
27 subcontractors, sub-subcontractors, materialmen, or agents of
28 any tier or their respective employees; or
29 3. The indemnitee or its officers, directors, agents,
30 or employees. However, such indemnification shall not include
31 claims of, or damages resulting from, gross negligence or

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

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

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

29 (a) The general contractor or subcontractor may at any
30 point prior to the date the subcontractor, sub-subcontractor,
31

1 or materialman commences work or delivers material to the
2 project, accept or reject the policy as being nonconforming.

3 (b) If not rejected, the general contractor or
4 subcontractor shall be deemed to have accepted the policy and
5 the general contractor or subcontractor may not use the lack
6 of conforming insurance as a reason to reject work already
7 completed by a subcontractor or sub-subcontractor, or material
8 already supplied by the materialman, or withhold payment to
9 the subcontractor, sub-subcontractor, or materialman for work
10 already completed or material already supplied. However, this
11 section does not apply if the certificate was fraudulently
12 issued by the agent or insurer or reflects coverages or
13 conditions not contained in the underlying policy. This
14 subsection also does not apply if the policy is cancelled,
15 nonrenewed, or is materially and adversely altered during the
16 term of the contract.~~Except as specifically provided in~~
17 ~~subsection (2), a construction contract for a public agency or~~
18 ~~in connection with a public agency's project may not require~~
19 ~~one party to indemnify, defend, or hold harmless the other~~
20 ~~party, its employees, officers, directors, or agents from any~~
21 ~~liability, damage, loss, claim, action, or proceeding, and any~~
22 ~~such contract provision is void as against public policy of~~
23 ~~this state.~~

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

27 Section 2. This act shall take effect upon becoming a
28 law.

29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1710

A certificate of insurance required in connection with a construction contract is not deemed accepted by a general contractor or subcontractor if the certificate was fraudulently issued, reflects coverage not contained in the policy, or if the underlying policy is cancelled, non-renewed, or materially and adversely altered during the term of the contract.