

HB 1455

2006

1 A bill to be entitled
 2 An act relating to construction contracts; amending s.
 3 725.06, F.S.; deleting exceptions and limitations on such
 4 exceptions to construction contracts promising to
 5 indemnify or hold harmless certain parties from certain
 6 liabilities as being void and unenforceable; specifying as
 7 void and unenforceable portions of construction contracts
 8 under which parties undertake to insure or purchase
 9 insurance liability for damages for certain other parties;
 10 providing exceptions; providing construction to preserve
 11 limits on certain indemnity agreements or agreements to
 12 insure; deleting a prohibition against certain
 13 construction contracts for public agencies requiring
 14 certain activities of the parties relating to specified
 15 liabilities; 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 amended to
 20 read:

21 725.06 Construction contracts; limitation on
 22 indemnification.--

23 (1) Except as provided in subsections (2) and (4), any
 24 portion of any agreement or contract for or in connection with,
 25 or any guarantee of or in connection with, any construction,
 26 alteration, repair, or demolition of a building, structure,
 27 appurtenance, or appliance, including moving and excavating
 28 associated therewith, between an owner of real property and an

HB 1455

2006

29 architect, engineer, general contractor, subcontractor, sub-
30 subcontractor, or materialman or any combination thereof wherein
31 any party referred to herein promises to indemnify or hold
32 harmless the other party to the agreement, contract, or
33 guarantee for liability for damages to persons or property
34 caused in whole or in part by any act, omission, or default of
35 the indemnitee arising from the contract or its performance,
36 shall be void and unenforceable ~~unless the contract contains a~~
37 ~~monetary limitation on the extent of the indemnification that~~
38 ~~bears a reasonable commercial relationship to the contract and~~
39 ~~is part of the project specifications or bid documents, if any.~~
40 ~~Notwithstanding the foregoing, the monetary limitation on the~~
41 ~~extent of the indemnification provided to the owner of real~~
42 ~~property by any party in privity of contract with such owner~~
43 ~~shall not be less than \$1 million per occurrence, unless~~
44 ~~otherwise agreed by the parties. Indemnification provisions in~~
45 ~~any such agreements, contracts, or guarantees may not require~~
46 ~~that the indemnitor indemnify the indemnitee for damages to~~
47 ~~persons or property caused in whole or in part by any act,~~
48 ~~omission, or default of a party other than:~~

49 ~~(a) The indemnitor;~~

50 ~~(b) Any of the indemnitor's contractors, subcontractors,~~
51 ~~sub-subcontractors, materialmen, or agents of any tier or their~~
52 ~~respective employees; or~~

53 ~~(c) The indemnitee or its officers, directors, agents, or~~
54 ~~employees. However, such indemnification shall not include~~
55 ~~claims of, or damages resulting from, gross negligence, or~~
56 ~~willful, wanton or intentional misconduct of the indemnitee or~~

HB 1455

2006

57 ~~its officers, directors, agents or employees, or for statutory~~
58 ~~violation or punitive damages except and to the extent the~~
59 ~~statutory violation or punitive damages are caused by or result~~
60 ~~from the acts or omissions of the indemnitor or any of the~~
61 ~~indemnitor's contractors, subcontractors, sub-subcontractors,~~
62 ~~materialmen, or agents of any tier or their respective~~
63 ~~employees.~~

64 (2) A construction contract for a public agency or in
65 connection with a public agency's project may require a party to
66 that contract to indemnify and hold harmless the other party to
67 the contract, their officers and employees, from liabilities,
68 damages, losses and costs, including, but not limited to,
69 reasonable attorney's fees, to the extent caused by the
70 negligence, recklessness, or intentional wrongful misconduct of
71 the indemnifying party and persons employed or utilized by the
72 indemnifying party in the performance of the construction
73 contract.

74 (3) Except as provided in subsection (4), any portion of
75 any agreement or contract for or in connection with, or any
76 guarantee of or in connection with, any construction,
77 alteration, repair, or demolition of a building, structure,
78 appurtenance, or appliance, including moving and excavating
79 associated therewith, between an owner of real property and an
80 architect, engineer, general contractor, subcontractor, sub-
81 subcontractor, or materialman or any combination of such parties
82 under which any such party undertakes to insure or purchase
83 insurance for the other party to the agreement, contract, or
84 guarantee for liability for damages to persons or property

85 caused in whole or in part by any act, omission, or default of
 86 the party to be insured is void and unenforceable, except such
 87 insurance may be purchased to cover the vicarious liability that
 88 the party to be insured may have for the actions of the other
 89 party to the agreement, contract, or guarantee.

90 (4)-(3) This section shall not be construed to place limits
 91 on indemnity agreements or agreements to insure that are solely
 92 between an entity regulated by the Florida Public Service
 93 Commission and an architect, engineer, general contractor,
 94 subcontractor, sub-subcontractor, or materialman as long as the
 95 contract contains a monetary limitation on the extent of the
 96 indemnification that bears a reasonable commercial relationship
 97 to the contract and is part of the project specifications or bid
 98 documents, if any. ~~Except as specifically provided in subsection~~
 99 ~~(2), a construction contract for a public agency or in~~
 100 ~~connection with a public agency's project may not require one~~
 101 ~~party to indemnify, defend, or hold harmless the other party,~~
 102 ~~its employees, officers, directors, or agents from any~~
 103 ~~liability, damage, loss, claim, action, or proceeding, and any~~
 104 ~~such contract provision is void as against public policy of this~~
 105 ~~state.~~

106 (5)-(4) This section does not affect any contracts,
 107 agreements, or guarantees entered into before the effective date
 108 of this section ~~or any renewals thereof.~~

109 Section 2. This act shall take effect July 1, 2006.