

By Senator Baker

24-1331-06

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A bill to be entitled

An act relating to construction contracts;  
amending s. 725.06, F.S.; deleting certain  
exceptions to the prohibition against certain  
indemnification or hold-harmless agreements or  
agreements to insure certain other parties in  
construction contracts; providing an exception  
for certain public utilities and other public  
agencies; providing an effective date.

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

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

725.06 Construction contracts; limitation on  
indemnification.--

(1) Except as provided in subsection (3), any portion  
of any agreement or contract for or in connection with, or any  
guarantee of or in connection with, any construction,  
alteration, repair, or demolition of a building, structure,  
appurtenance, or appliance, including moving and excavating  
associated therewith, between an owner of real property and an  
architect, engineer, general contractor, subcontractor,  
sub-subcontractor, or materialman or any combination thereof  
wherein any party referred to herein promises to indemnify or  
hold harmless the other party to the agreement, contract, or  
guarantee for liability for damages to persons or property  
caused in whole or in part by any act, omission, or default of  
the indemnitee arising from the contract or its performance,  
shall be void and unenforceable. ~~unless the contract contains  
a monetary limitation on the extent of the indemnification~~

1 ~~that bears a reasonable commercial relationship to the~~  
2 ~~contract and is part of the project specifications or bid~~  
3 ~~documents, if any. Notwithstanding the foregoing, the monetary~~  
4 ~~limitation on the extent of the indemnification provided to~~  
5 ~~the owner of real property by any party in privity of contract~~  
6 ~~with such owner shall not be less than \$1 million per~~  
7 ~~occurrence, unless otherwise agreed by the parties.~~  
8 ~~Indemnification provisions in any such agreements, contracts,~~  
9 ~~or guarantees may not require that the indemnitor indemnify~~  
10 ~~the indemnitee for damages to persons or property caused in~~  
11 ~~whole or in part by any act, omission, or default of a party~~  
12 ~~other than:~~  
13       ~~(a) The indemnitor;~~  
14       ~~(b) Any of the indemnitor's contractors,~~  
15 ~~subcontractors, sub-subcontractors, materialmen, or agents of~~  
16 ~~any tier or their respective employees; or~~  
17       ~~(c) The indemnitee or its officers, directors, agents,~~  
18 ~~or employees. 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 or~~  
21 ~~its officers, directors, agents or employees, or for statutory~~  
22 ~~violation or punitive damages except and to the extent the~~  
23 ~~statutory violation or punitive damages are caused by or~~  
24 ~~result from the acts or omissions of the indemnitor or any of~~  
25 ~~the indemnitor's contractors, subcontractors,~~  
26 ~~sub-subcontractors, materialmen, or agents of any tier or~~  
27 ~~their respective employees.~~  
28       (2) Any portion of an agreement or contract for or in  
29 connection with, or a guarantee of or in connection with, any  
30 construction, alteration, repair, or demolition of a building,  
31 structure, appurtenance, or appliance, including moving and

1 excavating associated therewith, between an owner of real  
2 property and an architect, engineer, general contractor,  
3 subcontractor, sub-subcontractor, or materialman, or any  
4 combination thereof, wherein any party referred to in this  
5 subsection undertakes to insure or purchase insurance for the  
6 other party to the agreement, contract, or guarantee for  
7 liability for damages to persons or property caused in whole  
8 or in part by any act, omission, or default of the party to be  
9 insured is void and unenforceable, except that insurance may  
10 be purchased to cover the vicarious liability that the party  
11 to be insured may have for the actions of the other party to  
12 the agreement, contract, or guarantee. A construction contract  
13 for a public agency or in connection with a public agency's  
14 project may require a party to that contract to indemnify and  
15 hold harmless the other party to the contract, their officers  
16 and employees, from liabilities, damages, losses and costs,  
17 including, but not limited to, reasonable attorney's fees, to  
18 the extent caused by the negligence, recklessness, or  
19 intentional wrongful misconduct of the indemnifying party and  
20 persons employed or utilized by the indemnifying party in the  
21 performance of the construction contract.

22 (3) This section does not limit indemnity agreements  
23 or agreements to insure that are between only an entity  
24 regulated by the Public Service Commission or a public agency  
25 and an architect, engineer, general contractor, subcontractor,  
26 sub-subcontractor, or materialman, if the contract contains a  
27 monetary limitation on the extent of the indemnification that  
28 bears a reasonable commercial relationship to the contract and  
29 is part of any project specifications or bid documents. Except  
30 as specifically provided in subsection (2), a construction  
31 contract for a public agency or in connection with a public

1 ~~agency's project may not require one party to indemnify,~~  
2 ~~defend, or hold harmless the other party, its employees,~~  
3 ~~officers, directors, or agents from any liability, damage,~~  
4 ~~loss, claim, action, or proceeding, and any such contract~~  
5 ~~provision is void as against public policy of this state.~~

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

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

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12 SENATE SUMMARY

13 Deletes certain exceptions to prohibitions against  
14 certain indemnification or hold-harmless agreements or  
15 agreements to insure certain other parties in  
16 construction contracts. Provides an exception for certain  
17 public utilities and other public agencies.  
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