

FILED MAR 06 2006

SENATE FILE 2335
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3186)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to indemnity provisions in construction
2 contracts.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2335

1 Section 1. NEW SECTION. 537A.11 INDEMNITY AGREEMENTS --
2 CONSTRUCTION CONTRACTS.

3 1. As used in this section:

4 a. "Construction contract" means a public, private,
5 foreign, or domestic contract or agreement relating to the
6 construction, alteration, repair, or maintenance of any real
7 property in this state and includes agreements for
8 architectural services, demolition, design services,
9 development, engineering services, excavation, or other
10 improvement relating to real property, including buildings,
11 shafts, wells, and structures, whether on, above, or
12 underground.

13 b. "Indemnify" or "hold harmless" includes any requirement
14 to name the indemnified party as an additional insured in the
15 indemnitor's insurance coverage.

16 c. "Lower-tier party" means a party to the contract that
17 acts as a subcontractor, specialty contractor, or supplier.

18 d. "Upper-tier party" means a party to the contract that
19 acts as a general contractor.

20 2. A provision in a construction contract that requires
21 one party to the contract to indemnify, hold harmless, insure,
22 or defend the other party to the contract, including the other
23 party's officers, employees, or agents, against liability,
24 claims, damages, losses, or expenses, including attorney fees,
25 arising out of bodily injury to persons or damage to property
26 caused by or resulting from, in whole or in part, the
27 negligence, act, or omission of the indemnitee or the
28 officers, employees, or agents of the indemnitee, is void and
29 unenforceable as against the public policy of this state.

30 3. A construction contract may contain a provision and
31 shall be enforced only to the extent that the contract
32 requires either of the following:

33 a. One party to the contract to indemnify, hold harmless,
34 or insure the other party to the contract, including the other
35 party's officers, employees, or agents, against liability,

1 claims, damages, losses, or expenses, including attorney fees,
2 only to the extent that the liability, claims, damages,
3 losses, or expenses are caused by, or arise out of, the acts
4 or omissions of the indemnitor or the officers, employees, or
5 agents of the indemnitor.

6 b. A party to the contract to purchase a project-specific
7 insurance policy, including an owner's or contractor's
8 protective insurance, project management protective liability
9 insurance, or builder's risk insurance.

10 4. This section does not apply to the indemnity of a
11 surety by a principal on any surety bond or to an insurer's
12 obligation to its insureds.

13 5. If an upper-tier party to a construction contract is
14 named as an additional insured or additionally named insured
15 on a commercial general liability or similar liability policy
16 of insurance of a lower-tier party to a construction contract,
17 the coverage to the upper-tier party shall be limited to the
18 cost of defense and vicarious liability, and the policy shall
19 not extend coverage for the upper-tier party's own negligence,
20 whether sole or partial.

21 6. If a court action or other binding dispute resolution
22 proceeding is brought or initiated against an upper-tier party
23 for personal injury by an employee of a lower-tier party to a
24 construction contract, and it is ultimately determined that
25 the upper-tier party to the construction contract has no
26 liability to the employee other than vicarious liability, the
27 upper-tier party has a claim of indemnity for all costs,
28 including costs of experts and attorney fees, associated with
29 defending such action against any party in the contractual
30 chain determined to have any liability for the personal
31 injury. Any liability of the employee for the employee's own
32 personal injury shall be attributed to the employee's employer
33 for purposes of this subsection. This indemnification
34 obligation shall be joint and several among the parties found
35 liable for the personal injury.

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EXPLANATION

This bill relates to the use of indemnity provisions in construction contracts. The bill prohibits the use of a provision in a construction contract that requires one party of the contract to indemnify or hold harmless the other party to the contract for damages arising out of the negligence, act, or omission of the indemnitee or the officers, employees, or agents of the indemnitee as void and unenforceable as against public policy.

The bill provides that a construction contract may either contain a provision requiring a party to the contract to purchase a project-specific insurance policy, or a provision that requires one party of the contract to indemnify or hold harmless the other party to the contract for damages arising out of the negligence, act, or omission of the indemnitor or the officers, employees, or agents of the indemnitor. The bill does not apply to the indemnity of a surety by a principal on a surety bond.

The bill provides that if an upper-tier party to a construction contract is named as an additional insured on a liability policy of a lower-tier party to a construction contract, the coverage of the policy to the upper-tier party shall be limited to the cost of defense and vicarious liability and not to the upper-tier party's own negligence.

The bill also provides that if a court action or binding dispute proceeding is brought by an employee of a lower-tier party against an upper-tier party to a construction contract and the upper-tier party is found to be without liability other than vicarious liability, the upper-tier party shall have a claim of indemnity for all costs of the court action or dispute resolution proceeding.

The bill provides definitions of the terms "construction contract", "indemnify" or "hold harmless", "lower-tier party", and "upper-tier party".

McKinley CO-chair
Courtney CO-chair
Zawn
Rielly

Succeeded By / SSB# 3186
SF/HF 2335 Commerce

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CO-CHAIRPERSONS BEHN and
WARNSTADT)

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Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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