

Equitable Allocation of Risk

So small business works

PASS [HF803](#) / [SF1025](#)

In 2020, MN passed a \$1.87 billion bonding bill... But non-negotiable contract terms stop small contractors from working and/or burden them with significant risk they can't control.

Issue: MN law allows legal fees to fall on the smallest contractors, even if they aren't at fault.

- To work, small contractors have to agree to pay for/insure the legal costs for upstream parties - even when the upstream party is negligent and the small contractor is not.
- The practice is common, the terms are often non-negotiable & subs pass them downstream too.
- Current law is unfair, it decreases profits & prevents contractors from working.

Negative Impacts of Current Law & MN 2017 Joint Disparity Study Quotes

1. The state's aware that burdensome insurance requirements hinder small contractors.

- "A focus group participant from a public entity commented that she has knowledge of firms experiencing challenges with insurance." [#FG-1] App. J, p.52

2. They increase costs and risks for small business & decrease profitability.

- "Public sector insurance requirements are a barrier to businesses seeking public sector prime contracts and subcontracts. One business owner, for example, "You have to pay the premiums that exceed the limits of a normal policy... it takes away from our profitability." Ch. 5, p.25

3. Stops small & DBE businesses (women, minority & veterans) from taking jobs.

- "An African American female owner of a specialty services firm serving persons with disabilities reported that she was unable to secure the necessary insurance that her firm needed. She remarked that in addition to the high cost, finding an insurance company willing to work with her was impossible. She concluded that lack of insurance limited her ability to perform work in Minnesota. [#I-55]." App. J, p.21

What this bill does:

1. Adds the word "defend" to the definition of "indemnification agreement", closing the loophole that allows a negligent party to make someone else pay/insure their legal fees ([337.01](#)).
2. Deletes the term "project-specific insurance", removing ambiguous wording, which some try to use as a full indemnity exception (337.05 subd.3c).
3. Parity of public & private work (apply current private contract law (337) to public work (15.72)).
 - If passed, an upstream party can still require vicarious liability coverage for the costs the upstream party incurs due to a downstream contractor's acts ([337.05, Subd.1\(d\)](#)).