



March 11, 2021

Representative Rob Ecklund  
Chair, Labor, Industry, Veterans and Military Affairs Finance and Policy Committee  
409 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, MN 55155

**Subject: H.F. 803**

Dear Chair Ecklund and Members of the Labor, Industry, Veterans and Military Affairs Committee,

We are writing today to share our concerns with H.F. 803. The bill reduces the protections to public owners in construction contracts by rendering certain types of indemnity provisions unenforceable. At the same time, it allows the indemnity provision if it is in favor of the contractor.

- The bill alters long-standing methods of allocating risk on construction projects by transferring the responsibility from the party executing the work to the party contracting for the work to be completed. It may force public project owners to incur the expense of defending claims that should properly be defended by the prime contractor. If a public project owner is sued, and attempts to tender the claim to the prime contractor, the prime may refuse the tender and the public owner would be forced to litigate a case all the way to a verdict in an attempt to determine fault. This will occur even though the contractor's insurer would likely cover the cost of a defense. Where the project owner usually has little if any involvement in the events giving rise to the claim in a construction project, it is unfair to limit the owner's ability to tender the defense of the claim.
- The word "defend" has not been part of the state's anti-indemnity law because the duty to defend has historically been understood as broader than the duty to indemnify. The law is well-intentioned in attempting to tie defense to fault, but the reality is that when a lawsuit is filed, fault may not be entirely clear, and therefore the defense should be handled by the party that is most likely at fault.
- Since recovery of attorney fees will depend on establishing fault, it will likely cause more construction lawsuits and it will likely reduce chances of settling a construction lawsuit before a trial, resulting in increased costs to the taxpayers for public projects.
- The cost of public projects will increase if public owners are forced to defend more vicarious liability claims related to the execution of the work and cannot tender the defense of those claims to the prime contractor.

This bill is a substantial change from current law and practice. We are concerned that the increased costs of public contracting will ultimately impact taxpayers. Thank you for the opportunity to share our concerns. We will continue the conversation with the author.

Sincerely,



Alice Roberts-Davis  
Commissioner  
Department of Administration



Margaret Anderson-Kelliher  
Commissioner  
Minnesota Department of Transportation



Irene Kao  
Intergovernmental Relations Counsel  
League of Minnesota Cities



Matthew Massman  
Executive Director  
Minnesota Inter-County Association



Mitchell Kilian  
Associate Vice President, Governmental Affairs  
Metropolitan Airports Commission

Cc: Labor, Industry, Veterans and Military Affairs Finance and Policy Committee Members