

Pass HF803 / SF1025

Myth v. Reality

There are many misconceptions about this bill...

Reality: HF803/SF1025 follows the American Rule & makes a negligent person pay for their own lawyer.

Myth 1: This will increase construction costs & insurance costs - **False**

- **Reality:** The bill will likely decrease lawyer fees & insurance costs for businesses that have done nothing wrong.
- It may increase the negligent party's lawyer's fees and corresponding insurance over time – but that's how it should work, a negligent party should pay for their own lawyer fees.

Myth 2: Current practice is the most efficient & that's why it's done this way - **False**

- **Reality:** Today's terms are common because there's a significant imbalance in bargaining power.
- Typically, if a sub doesn't agree to "defend," the sub doesn't get the work.

Myth 3: This will require more insurance & full litigation of every claim - **False**

- **Reality:** Every responsible business on a construction site already has their own insurance.
- The bill aligns MN-law with "the American Rule" & incentivizes a negligent party to settle sooner.

Myth 4: This law only benefits the contractor/subcontractor - **False**

- **Reality:** It links fault & responsibility.
- It doesn't advantage anyone; it just makes each party responsible for their acts & attorney's fees.

Myth 5: Defense costs are only passed down when it "relates" to the Sub's work - **False**

- **Reality:** Just about everything on a project can "relate."
- Ex. A General drops a hammer on a Sub's employee. The Sub's employee was hit while working, so it "relates" to the Sub's work.

Myth 6: The General will be on the hook when a sub does something wrong - **False.**

- **Reality:** [MN§337.02](#) allows agreements that cover the sub's own negligence.
- [MN§337.05, Subd.1\(d\)](#) also allows insurance for "vicarious liability". If a General is brought into a suit because a Sub, the General can require vicarious liability coverage from the Sub.

Myth 7: This bill will confuse the legal concepts of "indemnity" and "defense" - **False.**

- **Reality:** The same terms are used in MN trucker law ([MN§221.87](#)) & MN design law ([MN§604.21](#)).

Myth 8: Current practice is needed to protect taxpayers – **False.**

- **Reality:** Small businesses, employees & owners are taxpayers too.
- Public agency contracting requirements can decrease "profitability" & add barriers to entry – see the [2017 MN Joint Disparity Study on the MN Dept. of Admin \(chapter 5, page 25\)](#).