



**SMARCA, INC.**  
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February 20, 2023

Minnesota Senate  
Minnesota House of Representatives  
Minnesota State Capitol  
Saint Paul, MN 55155

Re: Vote "Yes" on HF865/SF754

Dear Honorable Members of the Legislature:

SMARCA is a trade association for union contractors engaged in the sheet metal, mechanical and roofing industries. We represent over 200 Minnesota construction companies. Our contractors build, remodel and maintain industrial, commercial and residential structures.

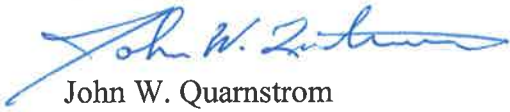
On behalf of our member contractors, we ask that you support and vote "Yes" on HF865 and SF754. The duty to defend terms in Minnesota construction contracts put the viability of our member companies at risk every day. When working as a subcontractor, our companies are forced to sign construction contracts with duty to defend terms or not be awarded the job. The duty to defend terms require the subcontractor to pay for the legal costs of the general contractor regardless of fault, cost of defense or issue being litigated. The subcontractor must pay the legal costs of the general contractor even when the costs are incurred due to the negligent conduct of the general contractor. This is fundamentally unfair, but frequently occurs because of the superior bargaining power of general contractors.

When someone else is required to pay their legal costs, the general contractor is allowed to litigate as long as the legal system will allow and there is no incentive to settle the lawsuit or make a cost/benefit analysis on the merits of continuing the fight. With few exceptions, parties to a lawsuit are required to pay their own legal costs in Minnesota. There is no good reason or public policy argument in favor of allowing general contractors to require subcontractors to pay the general contractor's legal costs when incurred due to the wrongful conduct of the general contractor.

Soon you will have the opportunity to fix this problem by voting "Yes" on HF865/SF754. Passing this legislation will end the problem of subcontractors being forced to pay the legal fees of the general contractor when the general contractor is at fault. Now is the time to close this unfair loophole.

This issue is very important to our contractors and we thank you for your time and careful deliberation. Thank you for your anticipated "Yes" vote on HF865 and SF754.

Sincerely,



John W. Quarnstrom  
CEO