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SF3035 Conference Committee Members  
MN State Capitol  
May 2023

***RE: Support & Pass SF3035, Article 13 (Building & Construction Contracts)***

Honorable Conference Committee Members,

The MN Subcontractors Association (MSA) asks that you support & pass SF3035, Article 13 (Building & Construction Contracts) aka the “Duty to Defend” bill.

Article 13 is about fairness. It ensures that a negligent party pays for their own legal costs. The bill has bipartisan support in the legislature & the support from a broad cross-section of organizations including labor, management, trial attorneys & the MN Council on Latino Affairs.

When a general contractor is negligent, the general contractor should take responsibility, and when a subcontractor is negligent the subcontractor should take responsibility. **Minnesota’s laws should reflect principles of basic fairness and remove barriers for small businesses.**

The current defense demands in MN construction contracts are fundamentally unfair, often non-negotiable & they hurt small businesses. Harm occurs when subcontractors must choose between agreeing to sign these unfair terms or giving up the work. Harm occurs again when a claim arises & when the unfair duty to defend contract terms are used to negotiate an unfair settlement.

**The 2017 MN Joint Disparity Study recommends to “Jointly pursue action by the State Legislature to reduce barriers to public sector procurement embedded in state law.”** MSA agrees, and we need the legislature to end unfair “duty to defend” contract terms to ensure an equitable allocation of risk.

Please support & pass SF3035, Article 13 (Building & Construction Contracts).

Respectfully,  
Jen Wothe,  
MSA Executive Director

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