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Honorable Minnesota House of Representatives  
Judiciary Finance and Civil Law Committee  
Saint Paul, MN 55155

March 18, 2021

***RE: Support & Pass HF803***

Honorable Representatives,

The MN Subcontractors Association supports HF803 & asks you to pass it today. This legislation has been a top priority since 2014, when lawyers found a loophole around the 2013 anti-indemnity law.

HF803 is about fairness - it requires that a negligent party to pay for/insure their own legal fees. It's common sense, good public policy, and it aligns fault with financial responsibility.

The current unfair defense requirements in MN construction contracts hurt small businesses. The harm from unfair demands occurs both immediately and then again when claims arise.

Our members' stories, alongside quotes from the 2017 MN Joint Disparity Study, illustrate the concerns we have & why HF803 needs to be passed:

- **The 2017 MN Joint Disparity Study on MNDOT**, explicitly notes that excessive insurance requirements are a barrier: *“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.*
- **A subcontractor-member** hired an attorney to understand & redraft an unfair contract, including the defense provision, paying the attorney \$1,000 before the job even started.
- **Numerous members** have told MSA that they have to sign these contracts, or they will not get the work. Subcontractors get the non-negotiable contracts after they have invested hours & hours reviewing the specs, putting a bid together, and maybe even purchasing materials and/or completing some of the work. Then they're told that they must sign the contract with an unfair defense provisions or they won't get the job. In today's market subcontractors often take the work just to keep their people employed.



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**Below are two recent examples provided by a Midwest insurance company, showcasing unfair outcomes due to the current defense requirements:**

- *“Insured Industry: Masonry contractor: Claim Specifics: Insured brought in to a third party complaint by general contractor. Numerous other subs named in complaint. The complained alleged construction defects at a townhome association. The insured's general liability policy provided defense and the coverage to hire experts to inspect the alleged construction defects. The experts stated that our insured had little, if any, impact on the defects. The insured's carrier contributed \$10,000 to a settlement, however, to avoid further litigation costs.”*
- *Insured Industry: Construction company: Claim Specifics: Insured hired to perform ground/soil work for a GC building a new commercial building. The owner of the commercial building alleged defects. The GC sent our insured a demand to defend and indemnify them since the GC was an additional insured on the policy and that even if the alleged defect claim was only partly related to our insureds work, our insured is obligated to defend the GC against the entire claim. The claim is currently ongoing with investigation into liability and cause of defects. Our insured will likely go to mediation to resolve and stop litigation expenses.*

**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.”** *Ex. Sum.p.10.1(h).* MSA agrees & we need the legislature to end unfair “duty to defend” contract terms to ensure an equitable allocation of risk in MN construction contracts.

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. Please pass HF803.

Respectfully,

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