

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1179, L.D. 1670, Bill, "An Act to Limit Indemnification in Construction Contracts"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 10 MRSA §1117-A is enacted to read:

§1117-A. Indemnification

A provision for or in connection with a construction contract, or any guarantee of a construction contract, that requires a general contractor or subcontractor to indemnify any party for injury to persons or damage to property for which negligence of the general contractor or subcontractor is not a proximate cause is void. Indemnification is enforceable only to the extent the negligence of the general contractor, its agents or employees or the subcontractor, its agents or employees is a direct proximate cause of the injury or damage and, in that event, the extent of the liability of the general contractor or subcontractor must be determined in accordance with Title 14, section 156 and may require defense by the general contractor or subcontractor only to the extent of the liability of the general contractor or subcontractor.

This section does not affect a valid insurance contract, workers' compensation agreement or other insurance agreement.

Sec. 2. Application. This Act applies to construction contracts entered into on or after September 1, 1998.'

COMMITTEE AMENDMENT

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

The additional costs associated with making changes to the current construction contract format can be absorbed by state departments and agencies utilizing existing budgeted resources.'

SUMMARY

This amendment replaces the bill but retains the original purpose, which is to prohibit the use of indemnification clauses in construction contracts that require the contractor or subcontractor to indemnify another party for the results of that party's own negligence.

This amendment declares void indemnification clauses in construction contracts and guarantees of construction contracts that require a contractor or subcontractor to indemnify another party for property damages or personal injuries that are not caused by the contractor or the subcontractor. The contractor is liable for the negligence of the contractor's employees or agents, and the subcontractor is liable for the negligence of the employees and agents of the subcontractor.

The new language does not affect a valid insurance contract, workers' compensation agreement or other insurance agreement, therefore eliminating the possibility that this provision would allow a suit against a party for injuries otherwise covered by workers' compensation.

The new language will not affect existing contracts. This amendment adds an application clause, directing that the new prohibition applies to contracts entered into on or after September 1, 1998.