



SUPPORT FOR S.1855

An Act to Limit Indemnity and Insurance Responsibility for General Contractors and Subcontractors in Construction Work

S.1855 puts a stop to unfair contract provisions that force subcontractors to pay the costs of accidents caused by others.

In construction contracts today, such “risk shifting” is the norm, and getting worse. It’s done through provisions that require a subcontractor to indemnify and insure the general contractor for any injuries or damages on the project, whether caused by the subcontractor or not. While the law sets some limits on indemnification requirements, there are none on insurance. In some cases, subs are forced to provide insurance to cover accidents where the general contractor is 100% at fault.

These unfair risk shifting provisions add to the cost of insurance that subs must buy, which in turn drives up the cost of construction. If there’s a major claim against the policy, the sub will end up paying higher premiums, which hurts his business and may make it harder to get insurance for future projects.

S.1855 levels the playing field by making everyone take responsibility for their own negligence. It prohibits provisions that force a subcontractor to indemnify and insure a general contractor for the general’s negligence; or provisions that force the general contractor to indemnify and insure the owner against the owner’s negligence. Everyone who contributes to injury or damage pays their fair share of the costs, on a pro-rata basis.

One thing it does NOT do is affect responsibility to injured plaintiffs, or reduce the amounts they can collect. Each and every party who contributes to injury or damage remains 100% responsible to the injured plaintiff, and the plaintiff can collect 100% of the damages from any one of them. All the bill does is change how the responsible parties agree by contract to share the costs (or reimburse each other) after the plaintiffs have been paid.

In sum, S.1855 restores fairness to Massachusetts law, and makes every business responsible for its own actions.

We urge the Legislature to approve S.1855 and bring Massachusetts into line with other states that have already adopted similar provisions.

Questions?

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