



## MINNESOTA WATER QUALITY ASSOCIATION

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Scott Schiesser, President  
Jeffrey Hill, Chair, Government Affairs

February 14, 2023

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

***RE: Vote Yes on HF 865 (SF 754) (End the Duty to Defend).***

Dear Honorable Members of the Legislature,

MWQA writes to you today on the inappropriate use of the law and fine print in the Minnesota construction industry. It shouldn't be necessary nor is it possible to legislate ethics, but this liability practice is blatant bullying. Legislation is necessary draw a line.

*The problem:* It has become standard practice in Minnesota for a General Contractor to contractually force Subcontractors to pay the General Contractor's legal fees, even when the General Contractor is negligent and the Subcontractor is not.

Lawyers have divorced fault from financial responsibility by exploiting ambiguous language in MN statutes 337.02 and 337.05. The practical result is that small and emerging Subcontractors must pay for the large General Contractors attorneys' fees - or the Subcontractors don't get to work. Below is the most common industry contract clause:

I am Chair of our Government Affairs Committee and have worked in the family business, Robert B. Hill Co. – St. Louis Park, thirty employees. In 1986, however, I was named President of CarbonAir Services. We were a new company formed of MWQA members and working for MPCA to remove carcinogens from municipal water. We did so in six towns in Minnesota. Our version of Flint, Michigan was averted by that MPCA action. Minnesota stayed off the national front page.

I had a great Board of Directors at CarbonAir; all were all my mentors. John Moorhead, Moorhead Machinery and Boiler Company was one who had words of encouragement I have never forgotten – and they relate to ***HF 865 / SF 754***. He told me that no job could be counted as successful if the profits were made at the expense of our subcontractors. Much has changed in business in those 35 years. Firms are larger, we do less by handshake, we write longer contracts, we involve attorneys – but basic ethics should not be left by the wayside. As the smallest of subcontractors, MWQA members are amazed at the thick and onerous contracts that large firms will present to us AFTER a price has been agreed, and for relatively small contracts.

Your legislation will make a statement for a fair playing field for small businesses. Please hear and pass this legislation.

Sincerely,

Jeffrey B. Hill