May 2, 2023

Honorable Jobs and Labor Conferees,

The Minnesota Nursery & Landscape Association (MNLA) strongly supports SF3035, Article 13, to end the practice of using indemnification contract clauses to compel subcontractors to pay the legal costs and attorney's fees for litigation arising from the work and negligence of another party.

This unfair and inequitable construction contract provision allows upstream contractors to compel subcontractors to pay their legal fees, regardless of fault. This unfair business practice hurts small businesses by forcing these subcontracting businesses to choose between signing these harmful contract provisions, or not taking the contract and not working – an impossible choice. However, this is a choice but one that many subcontracting companies face, including many MNLA members and Article 13 in SF3035 helps address this problem.

This Article eliminates the validity of these predatory contract clauses in Minnesota and ensures that those who are at fault pay for the costs incurred from their negligence. Either directly or vicariously.

While this proposal makes invalid these defense costs indemnity agreements, it does not prohibit the ability for contractors to be covered for any vicarious liability arising from the negligence of another entity. This important and unchanged provision ensures that if a general contractor is sued for the negligence of a subcontractor, the general contractor may still require the negligent subcontractor to cover this vicarious liability, minimizing the risk of the general contractor shouldering all the liability.

On behalf of all our members, we respectfully urge you to support SF3035, Article 13, to create fairness in construction contracts and ensure that those who are at fault pay for their own legal costs.

Sincerely,

Felipe Illescas
Director of Government Affairs
Minnesota Nursery & Landscape Association