



**House  
Legislative  
Analysis  
Section**

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**IMPROVEMENT CONTRACTS**

**House Bill 4957**  
**Sponsor: Rep. James M. Middaugh**  
**Committee: Local Government**

**Complete to 11-27-95**

**A SUMMARY OF HOUSE BILL 4957 AS INTRODUCED 6-14-95**

The bill would create a new act to require contracts between an owner and a contractor for improvements costing more than \$50,000 to contain a clause covering cases where the physical condition of the improvement site:

- a) was materially different than that indicated in the contract, or
- b) was unknown or unusual and was not ordinarily encountered when performing the type of improvement covered by the contract.

Upon making that discovery, and before disturbing the physical condition of the site, the contractor would have to notify the owner in writing. The owner would then have to determine if the physical condition would cause an increase in the contractor's costs or time. If the owner determined that there would be an increase in costs or time, that determination would be put in writing and become part of and modify the original contract. A contractor could not make a claim for additional costs or time because of a physical condition unless he or she had given the owner the required notification. (The contract clause required by the bill would contain the procedure just described.)

If the contractor did not agree with the owner's determination, he or she could complete performance on the contract and bring a cause of action to recover the actual increase in costs incurred because of the physical conditions of the improvement site, the costs of the action, and reasonable attorney fees.

The bill specifies that it would not limit the rights or remedies available to a contractor or owner under any other law or statute.

The term "improvement" in the bill would include, but not be limited to, all or any part of any building, structure, erection, alteration, demolition, excavation, clearing, grading, filling, landscaping, trees, shrubbery, driveways, and roadways on real property. The term "owner" would refer to a person who has an interest in the real property improved and for whom an improvement is made or who ordered the improvement. The term does include a state, local, or municipal governmental entity.

House Bill 4957 (11-27-95)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.