



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4957 (Substitute H-4 as passed by the House)
Sponsor: Representative James M. Middaugh
House Committee: Local Government
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 3-19-96

CONTENT

The bill would create a new act to require a contract between a contractor and a governmental entity for improvements exceeding \$75,000 to contain certain provisions regarding situations in which previously unknown physical conditions were discovered at a work site. Specifically, the contract would have to contain the following provisions:

- The contractor promptly would have to notify the governmental entity in writing if he or she discovered that 1) a subsurface or a latent physical condition at the site was differing materially from those indicated in the improvement contract, and/or 2) an unknown physical condition at the site was of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the improvement contract.
- If the governmental entity received such a notice, it promptly would have to investigate the physical condition.
- If the governmental entity determined that the physical conditions did materially differ and would cause an increase or decrease in costs or additional time needed to perform the contract, it would have to put its determination in writing. Further, an equitable adjustment would have to be made and the contract modified in writing accordingly.
- The contractor could not make a claim for additional costs or time because of a physical condition unless he or she had provided the required notice. The governmental entity could extend the time required for notice.
- The contractor could not make a claim for an adjustment under the contract after he or she had received the final payment under the contract.

If an improvement contract did not contain the provisions required, they would have to be incorporated into and considered part of the improvement contract.

If a contractor did not agree with the governmental entity's determination, he or she, with the consent of the governmental entity, could complete performance on the contract and bring a cause of action to recover the actual increase in contract time and costs incurred because of the physical condition of the improvement site.

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

“Contractor” would mean a person who contracted with a governmental entity to improve real property or perform or manage construction services. It would not include a person licensed under Article 20 of the Occupational Code, which applies to architects, professional engineers, and land surveyors. “Governmental entity” would mean the State, a county, city, township, village, public educational institution, or any political subdivision of such an entity.

“Improve” would mean to build, alter, repair, or demolish an improvement on, connected with, or beneath the surface of any real property, to excavate, clear, grade, fill, or landscape any real property, to construct driveways and roadways, or to perform labor on improvements. “Improvement” would include, but would 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. “Real property” would mean the real estate that was improved, including, but not limited to, lands, leaseholds, tenements, hereditaments (property that can be inherited) and improvements placed on the real property.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government. It could reduce conflicts regarding physical conditions at construction sites that differ materially from the contract. The Michigan Department of Transportation currently uses a similar clause in its contracts.

Fiscal Analyst: B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.