

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Middaugh and Alley

ENROLLED HOUSE BILL No. 4957

AN ACT to require contractors to provide certain notices to governmental entities concerning improvements on real property; to allow for the modification of contracts for improvement to real property; and to provide for remedies.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

(a) "Contractor" means a person who contracts with a governmental entity to improve real property or perform or manage construction services. Contractor does not include a person licensed under article 20 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2001 to 339.2014 of the Michigan Compiled Laws.

(b) "Governmental entity" means the state, a county, city, township, village, public educational institution, or any political subdivision thereof.

(c) "Improve" means to build, alter, repair, or demolish an improvement upon, 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 upon improvements.

(d) "Improvement" includes, but is not 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.

(e) "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(f) "Public educational institution" means a public elementary or secondary educational entity or agency established under the revised school code, Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, and institutions of higher education described in sections 4, 5, 6, and 7 of article VIII of the state constitution of 1963.

(g) "Real property" means the real estate that is improved, including, but not limited to, lands, leaseholds, tenements, hereditaments, and improvements placed on the real property.

Sec. 2. A contract between a contractor and a governmental entity for an improvement that exceeds \$75,000.00 shall contain all of the following provisions:

(a) That if a contractor discovers 1 or both of the following physical conditions of the surface or subsurface at the improvement site, before disturbing the physical condition, the contractor shall promptly notify the governmental entity of the physical condition in writing:

(i) A subsurface or a latent physical condition at the site is differing materially from those indicated in the improvement contract.

(ii) An unknown physical condition at the site is 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.

(b) That if the governmental entity receives a notice under subdivision (a), the governmental entity shall promptly investigate the physical condition.

(c) That if the governmental entity determines that the physical conditions do materially differ and will cause an increase or decrease in costs or additional time needed to perform the contract, the governmental entity's determination shall be made in writing and an equitable adjustment shall be made and the contract modified in writing accordingly.

(d) That the contractor cannot make a claim for additional costs or time because of a physical condition unless the contractor has complied with the notice requirements of subdivision (a). The governmental entity may extend the time required for notice under subdivision (a).

(e) That the contractor cannot make a claim for an adjustment under the contract after the contractor has received the final payment under the contract.

Sec. 3. If the contractor does not agree with the governmental entity's determination, with the consent of the governmental entity the contractor may 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.

Sec. 4. If an improvement contract does not contain the provisions required under section 2, the provisions shall be incorporated into and considered part of the improvement contract.

Sec. 5. This act does not limit the rights or remedies otherwise available to a contractor or the governmental entity under any other law or statute.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.