



HOUSE BILL No. 4957

June 14, 1995, Introduced by Reps. Middaugh and Alley and referred to the Committee on Local Government.

A bill to require contractors to provide certain notices to owners of 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:

1 Sec. 1. As used in this act:

2 (a) "Contractor" means a person who contracts with another
3 to improve real property or perform or manage construction
4 services. Contractor includes both the prime contractor and any
5 subcontractor.

6 (b) "Improve" means to build, alter, repair, or demolish an
7 improvement upon, connected with, or beneath the surface of any
8 real property, to excavate, clear, grade, fill, or landscape any
9 real property, to construct driveways and roadways, to perform

1 labor upon improvements, or to provide design or other
2 professional or skilled services for an improvement.

3 (c) "Improvement" includes, but is not limited to, all or
4 any part of any building, structure, erection, alteration, demo-
5 lition, excavation, clearing, grading, filling, landscaping,
6 trees, shrubbery, driveways, and roadways on real property.

7 (d) "Owner" means a person who has an interest in the real
8 property improved and for whom an improvement is made or who
9 ordered the improvement to be made. Owner does include a state,
10 local, or municipal governmental entity.

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

13 (f) "Prime contractor" means the person who contracts
14 directly with an owner or owner's agent.

15 (g) "Real property" means the real estate that is improved,
16 including, but not limited to, lands, leaseholds, tenements, her-
17 editaments, and improvements placed on the real property.

18 (h) "Subcontractor" means a person who has contracted to
19 furnish labor or supply materials for a prime contractor or
20 another subcontractor in connection with a contract to improve
21 real property, including any change orders.

22 Sec. 2. A contract for an improvement that exceeds
23 \$50,000.00 shall contain a clause that provides for all of the
24 following:

25 (a) If a contractor discovers 1 or both of the following
26 physical conditions of the surface or subsurface at the
27 improvement site, before disturbing the physical condition, the

1 contractor shall notify the owner of the physical condition in
2 writing:

3 (i) The physical condition is materially different than that
4 indicated in the improvement contract.

5 (ii) The physical condition is unknown or unusual and is not
6 ordinarily encountered when performing the type of improvement
7 covered by the contract.

8 (b) If the owner receives a notice under subdivision (a),
9 the owner shall make a determination if the physical conditions
10 will cause an increase in the contractor's cost or the time
11 required to perform on the contract.

12 (c) If the owner determines that there will be an increase
13 in costs or additional time needed to perform on the contract,
14 the owner's determination shall be made in writing and become
15 part of and modify the respective terms of the original
16 contract.

17 (d) That the contractor cannot make a claim for additional
18 costs or time because of a physical condition unless the contrac-
19 tor has complied with subdivision (a).

20 Sec. 3. If the contractor does not agree with the owner's
21 determination, the contractor may complete performance on the
22 contract and bring a cause of action to recover the actual
23 increase in costs incurred because of the physical conditions of
24 the improvement site, the costs of bringing the action, and rea-
25 sonable attorney fees.

1 Sec. 4. This act does not limit the rights or remedies
2 available to a contractor or owner under any other law or statute
3 of this state.