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## **IMPROVEMENT CONTRACTS: DIFFERING SITE CONDITIONS**

**House Bill 5607**

**Sponsor: Rep. James M. Middaugh**  
**Committee: Commerce**

**Complete to 2-25-98**

### **A SUMMARY OF HOUSE BILL 5607 AS INTRODUCED 2-24-98**

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

\*\* A contractor would have to promptly notify the governmental entity if he or she discovered 1) that a subsurface or latent physical condition at the site differed materially from those indicated in the improvement contract, and/or 2) that 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 a governmental entity received such a notice, it would have to promptly investigate the physical condition.

\*\* If the governmental entity determined that the physical conditions were materially different 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 and 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 to the governmental entity. A governmental entity could extend the time for the notice to be provided.

\*\* The contractor could not make a claim for an adjustment under the contract after the contractor had received the final payment under the contract.

If a contract did not contain the provisions cited above, the provisions would 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 could, with the consent of the entity, complete performance on the contract. At the option of the governmental agency, the contractor and the entity would arbitrate the contractor's entitlement to recover the actual increase in contract time and costs incurred because of the physical condition of the improvement site. The arbitration would have to be conducted in accordance with the rules

**House Bill 5607 (2-25-98)**

of the American Arbitration Association and judgment rendered could be entered in any court having jurisdiction.

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

The term "contractor" would not apply to a person licensed under Article 20 of the Occupational Code, which applies to architects, professional engineers, and surveyors. Otherwise, the term would refer to a individual or entity that contracts with a governmental entity to improve real property or perform or manage construction services. The term "governmental entity" would refer to the state, a county, city, township, village, public educational institution, or any political subdivision thereof. The term "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.

The bill's provisions would sunset effective June 30, 2002.

Analyst: J. Hunault

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