

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4505 (as passed by the House)

Sponsor: Representative Judson Gilbert

House Committee: Local Government and Urban Policy

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 5-29-01

CONTENT

The bill would amend Public Act 57 of 1998 (which requires that certain contracts with governmental entities contain specific provisions regarding differing site conditions) to repeal the Act's December 31, 2001, sunset provision.

MCL 125.1596

BACKGROUND

Public Act 57 of 1998 provides that a contract between a contractor and a governmental entity (the State, a county, city, township, village, public educational institution, or any political subdivision of such an entity) for an improvement that exceeds \$75,000 must contain a provision that, if a contractor discovers one or both of the following physical conditions of the surface or subsurface at the improvement site, before disturbing the physical condition, the contractor promptly must give the governmental entity written notice of the physical condition:

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

Under the Act, the contract also must provide that, if the governmental entity receives such a notice, it promptly must investigate the physical condition; and, if the governmental entity determines that the physical conditions does materially differ and will cause an increase or decrease in costs or additional time needed to perform the contract, that determination must be made in writing, an equitable adjustment must be made, and the contract must be modified in writing accordingly.

In addition, the contract must provide that the contractor may not make a claim for additional costs or time because of a physical condition unless the contractor complies with the notice requirements described above. The governmental entity may extend the time required for the notice. Further, the contract must provide that the contractor may not make a claim for an adjustment after receiving the final payment under the contract.

The Act specifies that if an improvement contract does not contain the provisions required above, they are incorporated into and considered part of the contract.

If the contractor does not agree with the governmental entity's determination, the contractor may complete performance on the contract with the governmental entity's consent. At the option of the governmental entity, the contractor and the entity may arbitrate the contractor's entitlement to recover the actual increase in contract time and costs incurred because of the physical conditions of the improvement site.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The Michigan Department of Transportation used a similar differing site condition clause prior to the enactment of Public Act 57 of 1998. The legislation did not have a fiscal impact on State contracts. According to the Michigan Municipal League, there has been no fiscal impact on local government.

Fiscal Analyst: B. Bowerman