



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

CONSTRUCTION CONTRACTS

House Bill 4927

Sponsor: Rep. Joseph Palamara

Committee: Business & Finance

Complete to 11-16-93

A SUMMARY OF HOUSE BILL 4927 AS INTRODUCED 7-8-93

The bill would create an act to void certain provisions in construction contracts that limit damages. Under the bill, language in a public or private construction contract that waived, released or extinguished the right of a contractor, subcontractor or supplier to recover damages caused by the delay of scheduled contract performance would be void and unenforceable as being against public policy. This provision would apply to situations involving one or more of the following:

- * When a delay was of a kind not within the reasonable contemplation of the parties to the contract at the time it was drafted.

- * When a delay was caused by the bad faith, fraud, misrepresentation or "other wrongful conduct" of the contracting authority or its authorized representative.

- * When a delay was due to the direct or active interference of the contracting authority or its authorized representative. "Active interference" would include failure 1) to provide site access; 2) of the contracting authority or owner to timely deliver owner-supplied materials as required by the contract; 3) of the contracting authority or its authorized representative to coordinate the activities of multiple contractors to encourage the "timely completion of work"; and 4) to acquire easements or permits necessary for the timely prosecution of the contract.

- * If a delay was unreasonably long.

- * If a delay was due to matters beyond the reasonable control of the contractor, subcontractor or supplier.

- * When inaccuracies or omissions in project plans delayed the originally-planned schedule of work.

- * When excessive change orders and plan revisions affected the contract's timely performance.

- * If delays were long enough to constitute an abandonment of the contract.

The bill provides that contractual provisions would have to be strictly construed against the contracting authority and upheld only upon clear and convincing evidence that enforcement of the contract clause was reasonable.