



HOUSE BILL No. 4927

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July 8, 1993, Introduced by Reps. Palamara and Profit and referred to the Committee on Business and Finance.

A bill to void certain provisions in construction contracts that limit damages; and to provide for remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. (1) A provision in a public or private construction  
2 contract that waives, releases, or extinguishes the right of a  
3 contractor, subcontractor, or supplier to recover damages result-  
4 ing from the delay of scheduled contract performance is void and  
5 unenforceable as being against public policy where the delay  
6 results from 1 or more of the following:

7       (a) Is of a kind not within the reasonable contemplation of  
8 the parties at the time the contract was formed.

9       (b) Was caused by the bad faith, fraud, misrepresentation,  
10 or other wrongful conduct on the part of the contracting  
11 authority or its authorized representative.

1 (c) Was caused by the direct or active interference of the  
2 contracting authority or its authorized representative.

3 (d) Is unreasonable in duration.

4 (e) Is caused by matters beyond the reasonable control of  
5 the contractor, subcontractor, or supplier.

6 (f) Inaccuracies or omissions in the project plans having  
7 delaying impact on the originally contemplated schedule of work.

8 (g) Excessive change orders and plan revisions affecting the  
9 timely performance of the contract.

10 (h) Are of such a duration as to constitute an abandonment  
11 of the contract.

12 (2) The contractual provisions shall be strictly construed  
13 against the contracting authority and upheld only upon clear and  
14 convincing evidence that enforcement of the contract clause is  
15 reasonable.

16 Sec. 2. As used in this act:

17 (a) "Active interference" includes any of the following:

18 (i) Failure to provide site access.

19 (ii) Failure of the contracting authority or owner to timely  
20 deliver owner supplied materials as required by the contract.

21 (iii) Failure of the contracting authority or its authorized  
22 representative to coordinate the activities of multiple contrac-  
23 tors to facilitate the timely completion of work.

24 (iv) Failure to acquire easements or permits necessary for  
25 the timely prosecution of the contract.

26 (b) "Construction contract" means a written agreement  
27 between a contractor and an owner for the construction, erection,

1 reconstruction, alteration, conversion, demolition, repair,  
2 moving, or equipping of a building, structure, roadway, parking  
3 lot, or any other public works improvement.