

HOUSE BILL No. 5607

February 24, 1998, Introduced by Reps. Middaugh, Alley, Brackenridge, Olshove, Dobronski, Griffin, Gernaat, Walberg, Rhead, Richner, Kukuk, Callahan, Murphy, Thomas, Leland, Profit, Palamara, Wetters, McNutt, Varga, Gagliardi, Gustafson, Kilpatrick, Sikkema, Schermesser, Birkholz, Bodem, Dobb, Raczkowski and Perricone and referred to the Committee on Commerce.

A bill to require contractors to provide certain notices to governmental entities concerning improvements on real property; to allow for the modification of contracts for improvement to real property; to provide for remedies; and to repeal acts and parts of acts.

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 a govern-
3 mental entity to improve real property or perform or manage con-
4 struction services. Contractor does not include a person
5 licensed under article 20 of the occupational code, 1980 PA 299,
6 MCL 339.2001 to 339.2014.

7 (b) "Governmental entity" means the state, a county, city,
8 township, village, public educational institution, or any
9 political subdivision thereof.

1 (c) "Improve" means to build, alter, repair, or demolish an
2 improvement upon, connected with, or beneath the surface of any
3 real property, to excavate, clear, grade, fill, or landscape any
4 real property, to construct driveways and roadways, or to perform
5 labor upon improvements.

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

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

12 (f) "Real property" means the real estate that is improved,
13 including, but not limited to, lands, leaseholds, tenements, her-
14 editaments, and improvements placed on the real property.

15 Sec. 2. A contract between a contractor and a governmental
16 entity for an improvement that exceeds \$75,000.00 shall contain
17 all of the following provisions:

18 (a) That if a contractor discovers 1 or both of the follow-
19 ing physical conditions of the surface or subsurface at the
20 improvement site, before disturbing the physical condition, the
21 contractor shall promptly notify the governmental entity of the
22 physical condition in writing:

23 (i) A subsurface or a latent physical condition at the site
24 is differing materially from those indicated in the improvement
25 contract.

26 (ii) An unknown physical condition at the site is of an
27 unusual nature differing materially from those ordinarily

1 encountered and generally recognized as inhering in work of the
2 character provided for in the improvement contract.

3 (b) That if the governmental entity receives a notice under
4 subdivision (a), the governmental entity shall promptly investi-
5 gate the physical condition.

6 (c) That if the governmental entity determines that the
7 physical conditions do materially differ and will cause an
8 increase or decrease in costs or additional time needed to per-
9 form the contract, the governmental entity's determination shall
10 be made in writing and an equitable adjustment shall be made and
11 the contract modified in writing accordingly.

12 (d) That the contractor cannot make a claim for additional
13 costs or time because of a physical condition unless the contrac-
14 tor has complied with the notice requirements of
15 subdivision (a). The governmental entity may extend the time
16 required for notice under subdivision (a).

17 (e) That the contractor cannot make a claim for an adjust-
18 ment under the contract after the contractor has received the
19 final payment under the contract.

20 Sec. 3. (1) If the contractor does not agree with the gov-
21 ernmental entity's determination, with the governmental entity's
22 consent the contractor may complete performance on the contract.

23 (2) At the option of the governmental entity, the contractor
24 and the governmental entity shall arbitrate the contractor's
25 entitlement to recover the actual increase in contract time and
26 costs incurred because of the physical condition of the
27 improvement site. The arbitration shall be conducted in

1 accordance with the rules of the American arbitration association
2 and judgment rendered may be entered in any court having
3 jurisdiction.

4 Sec. 4. If an improvement contract does not contain the
5 provisions required under section 2, the provisions shall be
6 incorporated into and considered part of the improvement
7 contract.

8 Sec. 5. This act does not limit the rights or remedies oth-
9 erwise available to a contractor or the governmental entity under
10 any other law or statute.

11 Sec. 6. This act is repealed effective June 30, 2002.