

Senate Fiscal Agency
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SFA

BILL ANALYSIS

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House Bill 4505 (as reported without amendment)
Sponsor: Representative Judson Gilbert
House Committee: Local Government and Urban Policy
Senate Committee: Economic Development, International Trade and Regulatory Affairs

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 for an improvement that exceeds \$75,000 must contain a provision that, if a contractor discovers physical conditions of the surface or subsurface at the improvement site differing materially from those indicated in the contract or from those normally encountered and generally expected, the contractor promptly must give the governmental entity written notice of the physical condition, before disturbing it.

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 condition does materially differ and will cause an increase or decrease in costs or additional time needed to perform the contract, an equitable adjustment must be made and the contract must be modified 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.

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.

Date Completed: 5-31-01

Fiscal Analyst: B. Bowerman