

HOUSE BILL No. 4694

June 6, 2017, Introduced by Reps. Reilly, Lucido, Calley, Allor, Runestad, Johnson, Barrett, Hoitenga, Brann, Hauck, Kelly and Theis and referred to the Committee on Regulatory Reform.

A bill to amend 1966 PA 165, entitled

"An act to invalidate certain requirements for indemnity in the construction industry,"

by amending section 1 (MCL 691.991), as amended by 2012 PA 468.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) In a contract for the design, construction,
2 alteration, repair, or maintenance of a building, a structure, an
3 appurtenance, an appliance, a highway, road, bridge, water line,
4 sewer line, or other infrastructure, or any other improvement to
5 real property, including moving, demolition, and excavating
6 connected therewith, ~~WITH THAT IMPROVEMENT~~, a provision purporting
7 to indemnify the promisee against liability for damages arising out
8 of bodily injury to persons or damage to property caused by or
9 resulting from the sole negligence of the promisee or indemnitee,

1 OR his OR HER agents or employees, is against public policy and is
2 void and unenforceable.

3 (2) When entering into a contract with a Michigan-licensed
4 architect, professional engineer, ~~landscape architect,~~ or
5 professional surveyor **OR A LANDSCAPE ARCHITECT WHO IS AUTHORIZED TO**
6 **DO BUSINESS IN THIS STATE** for the design of a building, a
7 structure, an appurtenance, an appliance, a highway, road, bridge,
8 water line, sewer line, or other infrastructure, or any other
9 improvement to real property, or a contract with a contractor for
10 the construction, alteration, repair, or maintenance of ~~any such~~ **AN**
11 improvement **TO REAL PROPERTY**, including moving, demolition, and
12 excavating connected therewith, **WITH THAT IMPROVEMENT**, a public
13 entity shall not require the Michigan-licensed architect,
14 professional engineer, ~~landscape architect,~~ or professional
15 surveyor, **THE LANDSCAPE ARCHITECT**, or the contractor to defend the
16 public entity or any other party from claims, or to assume any
17 liability or indemnify the public entity or any other party for any
18 amount greater than the degree of fault of the Michigan-licensed
19 architect, professional engineer, ~~landscape architect,~~ or
20 professional surveyor, **THE LANDSCAPE ARCHITECT**, or the contractor
21 and that of his or her respective subconsultants or subcontractors.
22 A contract provision executed in violation of this section is
23 against public policy and is void and unenforceable.

24 (3) For the purposes of this section, a contractor may be an
25 individual, sole proprietorship, partnership, corporation, limited
26 liability company, joint venture, construction manager, or other
27 business arrangement.

1 (4) As used in this section, "public entity" means this state
2 and all agencies ~~thereof~~, **OF THIS STATE**, any public body corporate
3 within this state and all agencies ~~thereof~~, **OF THOSE PUBLIC BODIES**,
4 and any nonincorporated public body within this state of whatever
5 nature and all agencies ~~thereof~~; **OF THOSE PUBLIC BODIES**, including,
6 but not limited to, cities, villages, townships, counties, school
7 districts, intermediate school districts, authorities, and
8 community and junior colleges as provided for in section 7 of
9 article VIII of the state constitution of 1963, and their employees
10 and agents, including, but not limited to, construction managers or
11 other business arrangements retained by or contracting with the
12 public entity to manage or administer the contract for the public
13 entity. However, public entity does not include institutions of
14 higher education as described or provided for in section 4 or 6 of
15 article VIII of the state constitution of 1963, or their employees
16 or agents.

17 (5) Nothing in this act affects the application of 1964 PA
18 170, MCL 691.1401 to 691.1419.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.

21 Enacting section 2. This amendatory act does not take effect
22 unless Senate Bill No. ____ or House Bill No. 4695 (request no.
23 02929'17) of the 99th Legislature is enacted into law.