

DESIGN-BUILD CONSTRUCTION OF SCHOOL BUILDINGS

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House Bill 5538 (H-3) as reported from committee

Sponsor: Rep. Sara Cambensy

Committee: Regulatory Reform

Complete to 5-4-22

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 5538 would amend 1937 PA 306, which governs the construction of school buildings, to allow plans to build or remodel school buildings to be prepared by a design-builder that employs a state-licensed architect or professional engineer who prepared the plans and specifications for the project. Plans and specifications for school building projects currently must be prepared by a licensed architect or professional engineer.

FISCAL IMPACT: House Bill 5538 would have an indeterminate fiscal impact on school construction costs. The cost differential associated with using a design-builder would be determined on a case-by-case basis.

THE APPARENT PROBLEM:

For more than a hundred years, the process typically used when a property owner wanted a new or remodeled building was to hire a design professional (e.g., an architect or professional engineer) and then bid out the project to find a contractor to build the project based on the design professional's plans. In more recent years, the design-build method has grown in popularity. With design-build, the property owner hires a design-builder whose employees or subcontractors do both the design and the construction. A design-build may be a better fit for a property owner and the project. For enthusiasts of the design-build concept, the pros include knowing the cost at the outset, as the design-builder typically carries the risk for construction-related events that can drive up the cost of a project. Michigan construction and building laws allow for design-build in the state, even for public agencies. However, a statute regulating school-related construction and remodeling does not specifically authorize public school districts to choose the design-build method for upcoming projects. Some feel that the law should be changed to give public school districts more options when choosing the best way to approach a project.

THE CONTENT OF THE BILL:

Currently, a school building or its additions cannot be erected, remodeled, or reconstructed without having the plans prepared by a state-licensed architect or professional engineer (unless otherwise specified in the rules on used modular classrooms promulgated by the director of the Department of Licensing and Regulatory Affairs (LARA)).

The bill would expand that provision to also allow plans and specifications to be prepared by a **design-builder** that employs a state-licensed architect or professional engineer who prepared the plans and specifications. In addition, such a design-builder could **construct** or **remodel** a school building, or any additions to the school building, if the architect or professional engineer directly supervised all of the following:

- The school building's construction or remodeling.

- The review of the materials used in the building’s construction or remodeling.
- The review of the completed phases of construction or remodeling.

Design-builder would mean an entity that provides ***design-build construction services***.

Design-build construction services would mean a project delivery method that meets all of the following requirements:

- A school district engages the services of a ***design-criteria developer*** to prepare a ***design-criteria package*** for the school district for a design-build project.
- A school district contracts with a single individual or entity for both design and construction services.
- Design and construction of the project is either sequential (with the entire design complete before construction commences) or concurrent (with the design produced in two or more phases and construction of some phases commencing before the entire design is complete).
- Selection is a single-phase selection using price and qualification to determine best value.

Design-criteria developer would mean a Michigan-licensed architect who is responsible for preparing a design-criteria package.

Design-criteria package would mean a set of documents that provides sufficient information to permit a design-criteria developer to prepare a proposal in response to a school district’s request for proposals.

Construction would mean the construction, erection, reconstruction, alteration, conversion, demolition, repair, moving, or equipping of buildings or structures.

Remodeling would mean the alteration, construction, or remodeling of partitions, hallways, stairways, and means of egress, and the replacement, relocation, or reconstruction of an electrical system or heating, ventilating, and sanitary equipment. [This term is currently defined in the act. The bill would amend it to include the replacement, relocation, or reconstruction of an electrical system.]

MCL 388.851, 388.851a, and 388.852

BACKGROUND:

House Bill 5538 is similar to HB 4495 of the 2019-20 legislative session.

ARGUMENTS:

For:

Proponents of the design-build method extol the benefits of knowing that the completed new build or remodeling project will fit within the customer’s budget, have a firm completion date, and require dealing with only one person—the design-builder—for both the design and the construction aspects. Often the design-build method may be quicker, more efficient, and more

cost-saving for a new build or remodel project. For instance, the time and stress of having to go back to the architect or engineer if an issue arises during the construction phase, and a delay between the planning stage and hiring a construction crew, are alleviated. Projects often take less time from signing a contract to completion, as some construction tasks can begin while the plans for the actual design are being finalized. Completion times are often more predictable with a design-build, since all concerned are employees or subcontractors of the design-builder and function as a coherent team.

Michigan law does not now specifically allow public school districts to contract with a design-builder for a new school building or a remodel of an existing public school building. The bill would provide school districts with the option of choosing the method—design-build or the traditional approach—that would best fit the project and the district’s budget. Many districts have aging buildings that must be torn down and rebuilt or that need significant remodeling to accommodate current needs. If a project’s cost suddenly escalates for an unforeseen reason, it could mean that a teacher must be let go to find the money needed to finish the project, something the bill’s proponents say wouldn’t happen with a design-builder. If savings could be realized by contracting with a design-builder, the public school district, and therefore taxpayers and students, would be the winners. Moreover, the bill would require that a Michigan-licensed architect or professional engineer prepare the actual design plans. Proponents of the bill argue that Michigan should join with the majority of states that already authorize public schools to choose design-build for school building projects.

Against:

Critics of the bills note that a design-build may be the more expensive way to go with some projects, which could result in a public school district losing rather than saving money. In addition, the traditional building approach lends itself to more creativity in design, as many design-builders use stock designs that may only be able to incorporate minor customization. The school district also would have more control as construction moves along under the traditional method than with a design-build method.

Most importantly, some have raised safety concerns regarding allowing public schools to utilize design-builders. To some, combining the roles of designer and builder in the process creates a conflict of interest should issues arise as the project progresses. With no separation between the designers and builders, architects could have fewer options for subcontractors, as the design-builder employs certain subcontractors, and an incentive to cut corners or choose lower quality materials to avoid extra costs could be created. Since the safety of children is the highest priority, some feel that the status quo should be maintained regarding public school buildings.

POSITIONS:

A representative of the Design-Build Institute of America testified in support of the bill.
(3-1-22)

The following entities indicated support for the bill:

- Michigan Association of School Boards (3-22-22)
- Byce And Associates (3-1-22)
- Wightman (3-1-22)

- K12 Finance Colab (3-1-22)
- Westfield Washington Schools (3-1-22)
- Buchanan Community School District (3-1-22)
- Thornapple Kellogg School District (3-1-22)
- Jonesville Community School District (3-1-22)

The Department of Licensing and Regulatory Affairs indicated a neutral position on the bill. (3-22-22)

Representatives of the following entities testified in opposition to the bill (3-1-22):

- AIA
- ACEC Michigan

The following entities indicated opposition to the bill (3-1-22):

- Associated Builders and Contractors of Michigan
- Johnson Controls
- Associated General Contractors of Michigan
- Michigan Society of Professional Surveyors

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.