



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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House Bill 5466 (Substitute S-5 as reported by the Committee of the Whole)

Sponsor: Representative Kurt Heise

House Committee: Judiciary

Senate Committee: Judiciary

### **CONTENT**

The bill would amend Public Act 165 of 1966, which invalidates certain indemnity requirements in construction contracts, to do the following, effective March 1, 2013:

- Extend the Act to the design of a building, and include infrastructure and any improvement to real property.
- Prohibit a public entity from requiring an architect, engineer, landscape architect, surveyor, or contractor to defend the public entity or any other party from liability claims or to indemnify the public entity or other party for an amount greater than the degree of fault of the architect, engineer, landscape architect, surveyor, or contractor.
- Specify that the Act would not affect the application of the governmental immunity law.

"Public entity" would mean the State; any public body corporate or nonincorporated public body within the State; or any agency of the State or public body. The term would include cities, villages, townships, counties, school districts, intermediate school districts, authorities, and community and junior colleges, and their employees and agents, including construction managers or other business arrangements retained by or contracting with the public entity to manage or administer the contract for the public entity. "Public entity" would not include State institutions of higher education.

Under the Act, a covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair, or maintenance of a building, structure, appurtenance, and appliance, that purports to indemnify the promisee against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of the promisee or indemnitee, is against public policy and is void and unenforceable.

MCL 691.991

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that public entities include indemnification clauses in their contracts with Michigan-licensed architects, professional engineers, landscape architects, or professional surveyors, the amount of indemnification owed to the public entities would be limited to only the degree of fault of the contractors (or their subcontractors). Under the status quo, a contract could legally require indemnification beyond the contractor's degree of fault and the contractor would be fully shielded from liability only if the damages resulted from the sole negligence of the indemnitee (the public entity). Therefore, by enacting a degree-of-fault principle in contracts with public entities, the bill could increase potential liabilities for public entities in cases in which the degree of fault is shared among the contractor and the public entity.

Date Completed: 12-4-12

Fiscal Analyst: Dan O'Connor