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BILL



ANALYSIS

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House Bill 5466 (Substitute H-1 as passed by the House)

Sponsor: Representative Kurt Heise

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 7-16-12

CONTENT

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

- **Extend the Act to the design, as well as the construction, alteration, repair, or maintenance, of a building.**
- **Include the design, construction, alteration, repair, or maintenance of infrastructure in the Act's indemnification prohibition.**
- **Prohibit a public entity from requiring a contractor, architect, engineer, or surveyor 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 contractor, architect, engineer, or surveyor.**
- **Specify that nothing in the Act would affect the application of the governmental immunity law.**

The bill would take effect on September 1, 2012.

Extension of Current Provisions

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.

Under the bill, that provision also would apply to the design of a building, structure, appurtenance, and appliance. In addition, the indemnification prohibition would apply to the design, construction, alteration, repair, or maintenance of infrastructure.

Public Entity Prohibitions

The bill specifies that, when entering into a contract with a contractor or Michigan-licensed architect, professional engineer, or surveyor in connection with or collateral to a contract or agreement relative to the design, construction, alteration, repair, or maintenance of a building, structure, appurtenance, appliance, or infrastructure, a public entity could not require the contractor, architect, engineer, or surveyor to defend the public entity or any

other party from claims, or to assume any liability or indemnify the public entity or any other party for any amount greater than the contractor's, architect's, engineer's, or surveyor's degree of fault and that of the person's subconsultants. The prohibition would include moving, demolition, and excavating connected with such a project. A contractual provision that violated the prohibition would be against public policy, void, and unenforceable.

As used in these provisions, "public entity" would mean the State and all of its agencies; any public body corporate within the State and all agencies of that body; or any nonincorporated public body within Michigan, of whatever nature, and all agencies of that body. This would include cities, villages, townships, counties, school districts, intermediate school districts, authorities, and public colleges or universities, and their employees and agents, including construction managers retained by the public entity.

MCL 691.991

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Dan O'Connor

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