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# New Law Limits Indemnification Provisions in Construction Contracts

By Dana L. Abrahams, Jeremy S. Motz / Jan 04, 2013

On December 22, 2012, Governor Snyder signed House Bill 5466 into law, amending the Void Construction Contracts Act (Public Act 165 of 1966). Currently, the Act invalidates certain indemnity requirements in construction contracts for buildings and structures that purport to require one party (indemnitor) to indemnify the other party (indemnitee) against liability or damages arising out of the sole negligence of the indemnitee, its agents or employees. Effective March 1, 2013, the Act's coverage is extended to:

- Make any clause or provision in any contract for the design, construction, alteration, repair or maintenance of a building, a structure, an appurtenance, an appliance, a highway, road, bridge, water line, sewer line or other infrastructure or any other improvement to real property, including moving, demolition and excavating connected therewith, that purports to require one party (indemnitor) to indemnify another party (indemnitee) against liability or damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of the indemnitee void and unenforceable.
- Prohibit a public entity from requiring a Michigan-licensed architect, engineer, landscape architect, professional 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 Michigan-licensed architect, engineer, landscape architect, professional surveyor, or contractor, and that of their respective sub-consultants or sub-contractors.

Under the Act, a "public entity" includes the State; any public body corporate or non-incorporated public body within the State; or any agency of the State or public body, including, but not limited to, 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. The term "public entity" does not include State institutions of higher education.

*A contract provision executed in violation of the Act is against public policy and void and unenforceable. It is important to note, however, the Act expressly provides that it **will not** affect the application of the governmental immunity laws applicable to these public entities.*

If you have any questions regarding this Act or any school construction issues, please contact:

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