

DESIGN-BUILD CONSTRUCTION OF SCHOOL BUILDINGS

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House Bills 4603 (H-2) as reported from committee

Sponsor: Rep. Tullio Liberati, Jr.

Committee: Regulatory Reform

Complete to 2-27-24

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

SUMMARY:

House Bill 4603 would amend 1937 PA 306, which governs the construction of school buildings. Currently, a school building or its additions cannot be erected, remodeled, or reconstructed without having the plans prepared by an architect or professional engineer licensed in Michigan (unless otherwise specified in the rules on used modular classrooms promulgated by the director of the Department of Licensing and Regulatory Affairs (LARA)). The act also prescribes requirements and prohibitions related to the construction of a school building, for example requiring the use of fire-resistant material for walls and floors.

The bill would remove the provisions described above and instead provide that a school building or its additions cannot be erected, remodeled, or reconstructed unless the plans and specifications are prepared by either of the following:¹

- An architect or a professional engineer who is licensed in Michigan.
- An architect or a professional engineer who is licensed in Michigan working in conjunction with a *design-builder* if the design-builder either meets the licensing requirements to practice architecture in Michigan or forms a *design-build team*.

Design-builder would mean an individual, a partnership, a joint venture, a corporation, or other legal entity that meets both of the following conditions:

- Furnishes design and general contracting services for a project.
- Completes design services in accordance with Article 20 of the Occupational Code,² or through a subcontract with a design firm that complies with that article.

Design-build team would mean a team consisting of a *design-build contractor*³ and an architect or professional engineer licensed in Michigan.

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 criteria developer,⁴ an architect, or a professional engineer who is licensed in Michigan⁵ to do both of the following:
 - Assist the school district in the selection and compensation of a design-build team or design-builder.

¹ As written, it seems unclear whether these provisions require that the architect also be licensed in Michigan.

² <http://legislature.mi.gov/doc.aspx?mcl-299-1980-20>

³ The bill does not define this term.

⁴ The term *criteria developer* is not defined in the bill, and there does not appear to be any state licensure of criteria developers. Note that the bill defines *design-criteria developer* as described below, but does not use the term.

⁵ As written, it seems unclear whether all three professionals would have to be licensed in Michigan, or only professional engineers.

- Provide for the scope of the services of a design-build team or design-builder.
- 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.

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

Design-criteria developer⁶ would mean an individual or firm that meets both of the following requirements:

- Is a licensed architect or a licensed professional engineer in Michigan.
- Is responsible for preparing a **design-criteria package** and provides construction inspection services.

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

A school building or construction that was constructed or remodeled under the bill's proposed provisions would still need to comply with the Stille-DeRossett-Hale Single State Construction Code Act and its associated rules.

MCL 388.851, 388.851a, and 388.852

BACKGROUND:

House Bill 4603 is identical to HB 5538⁷ as it was passed by the House during the 2021-22 legislative session.

BRIEF DISCUSSION:

Supporters of the bill argued that design-builds are already widely used in Michigan and are allowed for school construction in many other states. They also argued that design-build construction can allow for faster and more efficient projects, in addition to providing greater cost flexibility for schools.

Opponents of the legislation argued that the bill is attempting to solve a problem that doesn't exist, as they believe current law already allows for the use of design-build construction. They also contended that the bill would create a system unlike those allowing design-build

⁶ This term is not used in the bill.

⁷ <http://legislature.mi.gov/doc.aspx?2021-HB-5538>

construction in other states, by allowing the design-builder to hire a single architect or engineer and qualify to do school construction. They argued that this system could pose risks to the health and safety of students and others that use school buildings.

FISCAL IMPACT:

House Bill 4603 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.

POSITIONS:

Representatives of Performance Services, Inc. testified in support of the bill. (10-3-23)

The following entities indicated support for the bill (2-20-24):

- Michigan Association of School Boards
- Associated General Contractors of Michigan
- Mackinac Center
- Operating Engineers 324

Representatives of the following entities testified in opposition to the bill (10-3-23):

- American Council of Engineering Companies
- Michigan Society of Professional Engineers
- American Institute of Architects

Legislative Analyst: Alex Stegbauer
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■ 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.