

By: Deshotel

H.B. No. 490

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of certain provisions in construction contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Civil Practice and Remedies Code is amended by adding Title 10 to read as follows:

TITLE 10. ADDITIONAL MISCELLANEOUS PROVISIONS

CHAPTER 501. CERTAIN PROVISIONS IN CONSTRUCTION CONTRACTS

Sec. 501.001. DEFINITION. In this chapter, "construction contract" means a contract or agreement entered into or made by an owner, contractor, subcontractor, or supplier concerning the construction, alteration, repair, troubleshooting, or maintenance of a building, structure, appurtenance, or other improvement to or on real property, including moving, demolition, and excavation connected with the real property.

Sec. 501.002. APPLICABILITY OF CHAPTER. This chapter does not apply to a construction contract entered into by a municipality, county, or school district.

Sec. 501.003. AGREEMENT VOID AND UNENFORCEABLE. A provision, promise, understanding, or covenant contained in, collateral to, or affecting a construction contract is void and unenforceable to the extent that it provides or purports to provide to the indemnitee defense or indemnity, or both, against loss or liability that:

1 (1) is caused by or results from the sole or concurrent
2 negligence, including strict liability, of the indemnitee, an agent
3 or employee of the indemnitee, or an independent contractor
4 directly responsible to the indemnitee; and

5 (2) arises or results from:

6 (A) death or bodily injury to a person;

7 (B) damage to property;

8 (C) a fine, penalty, administrative action, or
9 other action by a governmental entity; or

10 (D) any other loss, damage, or expense that
11 arises from an occurrence described by Paragraph (A), (B), or (C).

12 Sec. 501.004. EFFECT ON INSURANCE POLICY. A provision in a
13 construction contract requiring an insurance policy provision or
14 endorsement that would frustrate or circumvent the prohibitions of
15 this chapter, including the payment of all or a portion of an
16 indemnitor's insurance premium by an indemnitee, is void and
17 unenforceable.

18 Sec. 501.005. WAIVER PROHIBITED. The provisions of this
19 chapter may not be waived by contract or otherwise.

20 Sec. 501.006. CONFLICT OF LAWS. A covenant, promise,
21 agreement, or understanding that is contained in or collateral to
22 or that affects a construction contract or a related insurance
23 policy provision or endorsement and that provides that the law of
24 another state will apply to the contractual relationship between
25 the indemnitor and the indemnitee is against public policy and void
26 if the premises where the labor is performed or the materials are
27 delivered under the contract are in this state or its territorial

1 reach.

2 Sec. 501.007. APPLICABILITY OF OTHER LAW. This chapter
3 prevails over any other law that conflicts with or is inconsistent
4 with this chapter.

5 SECTION 2. (a) This Act applies to a construction contract
6 entered into or renewed on or after the effective date of this Act
7 and to any specific, terminable performance of a specific job or
8 activity begun under a construction contract after the effective
9 date of this Act, including performance under a master or general
10 service agreement, a blanket or maintenance contract, or any
11 similar agreement or contract that purports to provide indemnity to
12 the indemnitee for all or part of the work performed, in whatever
13 form and by whatever name, regardless of whether the agreement or
14 contract was entered into or renewed before the effective date of
15 this Act.

16 (b) Except as provided by Subsection (a) of this section, a
17 construction contract entered into or renewed before the effective
18 date of this Act and any job or activity under the contract begun
19 before the effective date of this Act is governed by the law in
20 effect immediately before the effective date of this Act, and that
21 law is continued in effect for that purpose.

22 SECTION 3. This Act takes effect September 1, 2005.