

BILL ANALYSIS

C.S.H.B. 1999
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Reports indicate that certain local governmental entities, such as school districts, have been solicited to sue architects, engineers, and contractors for alleged construction defects in buildings before notifying the architects, engineers, and contractors of the alleged defects or offering a chance to inspect or correct them. C.S.H.B. 1999 seeks to address these situations by requiring an applicable governmental entity to notify each party with whom the entity contracted for the design or construction of a building with an alleged defect and to provide a chance to correct any defect before bringing any claim for damages.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1999 amends the Government Code to require an applicable governmental entity with an interest in a public building or public work affected by an alleged construction defect, before bringing an action asserting a claim against a contractor, subcontractor, supplier, a registered architect, or a licensed engineer for damages or indemnity or contribution for damages arising from property damage or loss caused by the alleged defect in an improvement to the public building or public work, to provide each party with whom the governmental entity has a contract for the design or construction of an affected structure a written report by certified mail, return receipt requested, that contains specified information. The bill requires any damages awarded to the governmental entity against the party responsible for a construction defect for which the entity recovers damages and identified by an applicable report to include reasonable amounts paid by the entity to obtain the related report. The bill defines "action" to mean a court or judicial proceeding or an arbitration and to exclude an administrative action.

C.S.H.B. 1999 requires the insurer to whom the party provides the written notice of an alleged construction defect or a report identifying a construction defect received by the party in connection with a potential claim against the party to treat the provision of the notice or report to the party as the filing of a suit asserting that claim against the party for purposes of the relevant policy terms. This provision applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2020.

C.S.H.B. 1999 provides for a party's opportunity to inspect and correct or enter into a separate agreement with the governmental entity to correct any construction defect or related condition

identified in the report before the governmental entity brings the action. The bill provides for the tolling of the limitations period applicable to the claim when the report and opportunity to correct are provided during the final year of the limitations period. The bill requires the adjudicating authority to which a governmental entity brings an action asserting a claim without complying with the reporting, inspection, and correction opportunity requirements to dismiss the action without prejudice. The bill requires the adjudicating authority, if such an action is dismissed and the governmental entity brings a second action asserting a claim without complying with those requirements, to dismiss the action with prejudice.

C.S.H.B. 1999 expressly does not prohibit or limit a governmental entity from making emergency repairs to the applicable property as necessary to protect the health, safety, and welfare of the public or a building occupant. The bill's provisions do not apply to the following:

- a claim for personal injury, survival, or wrongful death;
- a claim involving the construction of residential property covered under Property Code provisions relating to residential construction liability;
- a contract entered into by the Texas Department of Transportation;
- a project that receives money from a state or federal highway fund; or
- certain civil works projects.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1999 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the applicability of the bill's provisions by:

- including claims for contributions for specified damages; and
- excluding certain civil works projects.

The substitute does not include a provision requiring a governmental entity, before bringing an action asserting a claim, to obtain an independent third-party inspection and written report of the affected structure or a provision requiring the entity to provide written notice relating to the inspection. The substitute includes a provision requiring instead a governmental entity, before bringing an action asserting a claim, to provide each applicable party with whom the entity has a design or construction contract for an affected structure a written report relating to the construction defect and the affected structure.

The substitute revises provisions requiring a governmental entity to allow inspection and correction opportunities before bringing an action asserting a claim by:

- changing certain deadlines;
- including any known subcontractor or suppliers subject to the claim among the parties who must be allowed an inspection and correction opportunity; and
- giving parties subject to the claim the option of entering into a separate agreement with the governmental entity as an alternative to correcting any construction defect or related condition identified in the report after conducting an inspection.

The substitute changes the conditions that trigger the tolling of the limitations period for a claim.

The substitute changes the adjudicatory consequences for a governmental entity that brings an action without complying with the bill's requirements from giving the adjudicating authority discretion to abate the claim for one year or to dismiss the claim with or without prejudice to an automatic dismissal without prejudice in the first instance of the claim and an automatic dismissal with prejudice in the second instance.

The substitute replaces the authorization for any damages awarded to a governmental entity against the party responsible for a construction defect to include amounts paid by the entity to obtain the inspection and report identifying the defect with a requirement for such damages to include reasonable amounts paid by the entity to obtain the report identifying the defect.

The substitute revises the definitions of "contractor" and "design professional" for purposes of the bill's provisions.