

BILL ANALYSIS

Senate Research Center

H.B. 2899
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Transportation
5/6/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For more than a century, Texas law has held that a contractor warrants the adequacy of design as to the owner of a construction project. In 1907, the Supreme Court of Texas (supreme court) held in *Lonergan* that unless contractual language states otherwise, a contractor could be liable to the owner for design defects in the design prepared by the owner's designer. Further compounding the inequity in holding the contractor responsible for the errors and omissions of a designer, in 2014 the supreme court ruling in the Eby case denied the contractor the ability to seek a recovery from the designer. However, the contractor should not be held responsible for design deficiencies, errors or omissions if it was not responsible for preparing the design. Yet contrary to Texas' handling of construction law, the Spearin doctrine is followed by the United States federal government and every state in the nation except Texas.

Although the supreme court cases apply to all public and private owners alike, this legislation proposes a narrow exception to public policy and provides that a contractor is not civilly liable or responsible for design defects in a design prepared by certain government entities or their designers. This legislation does not apply to a private owner or any governmental entity not specifically listed in the proposed legislation. This legislation also does not eliminate a contractor's liability or responsibility for design defects in a design prepared by the contractor or a designer working for the contractor. This legislation is applicable only to public, governmental entities authorized to construct road or highway projects under the Texas Transportation Code.

H.B. 2899 amends current law relating to civil liability and responsibility for defects in the plans, specifications, or other documents for the construction or repair of roads, highways, and related improvements.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle Z, Title 6, Transportation Code, by adding Chapter 473, as follows:

CHAPTER 473. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

Sec. 473.001. DEFINITIONS. Defines "contract," "contractor," "governmental entity," and "project specifications" for purposes of this chapter.

Sec. 473.002. APPLICABILITY. Provides that this chapter applies to a governmental entity authorized by state law to make a contract and to any contractor with whom a governmental entity enters into a contract.

Sec. 473.003. LIMITATION ON CONTRACTOR'S RESPONSIBILITY FOR CERTAIN DEFECTS. (a) Provides that a contractor who enters into a contract with a governmental entity is not civilly liable or otherwise responsible for the accuracy,

adequacy, sufficiency, suitability, or feasibility of any project specifications and is not liable for any damage to the extent caused by:

- (1) a defect in those project specifications; or
 - (2) the errors, omissions, or negligent acts of a governmental entity, or of a third party retained by a governmental entity under a separate contract, in the rendition or conduct of professional duties arising out of or related to the project specifications.
- (b) Provides that a covenant or promise contained in a contract governed by this chapter is void and unenforceable to the extent that the covenant or promise conflicts with Subsection (a).
- (c) Provides that this section does not apply to a consultant retained in a separate contract by a governmental entity to expressly monitor the compliance with project specifications by another contractor with whom the governmental entity has entered into a contract.
- (d) Provides that this section does not relieve a contractor from the contractor's obligations or liability under a contract with a governmental entity.

Sec. 473.004. ENGINEER'S OR ARCHITECT'S STANDARD OF CARE. Prohibits a governmental entity from requiring that engineering or architectural services be performed to a level of professional skill and care beyond the level that would be provided by an ordinarily prudent engineer or architect with the same professional license and under the same or similar circumstances in a contract:

- (1) for engineering or architectural services; or
- (2) that contains engineering or architectural services as a component part.

SECTION 2. (a) Provides that the changes in law made by this Act do not apply to a contract that is entered into before the effective date of this Act. Provides that such a contract is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

(b) Provides that a contract subject to Chapter 473, Transportation Code, as added by this Act, with a governmental entity that is entered into before the effective date of this Act, and any subcontract or purchase order for furnishing labor or materials associated with that contract, regardless of whether the subcontract or purchase order is entered into before, on, or after the effective date of this Act, is governed by the law in effect when the original contract was entered into, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: upon passage or September 1, 2019.