

BILL ANALYSIS

C.S.H.B. 2901
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls to ensure that a contractor is not held liable for damages resulting from defects in the drawings, plans, or specifications for a construction project if the contractor was not responsible for preparing the design. C.S.H.B. 2901 seeks to address these calls by establishing a limitation on a contractor's liability and responsibility for the consequences of certain defects related to design and planning with respect to the construction or repair of an improvement to real property.

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. 2901 amends the Business & Commerce Code to establish that a contractor, as defined by the bill, is not responsible for the consequences of defects in and may not warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design or bid documents for the construction, as defined by the bill, or repair of any improvement to real property provided to the contractor by the person with whom the contractor entered into the contract or another on that person's behalf. The bill requires a contractor to make a written disclosure to the other contracting party of the existence of any known defect in the plans, specifications, or other design or bid documents discovered by the contractor before or during construction. The bill establishes that a contractor who fails to disclose such a condition may be liable for defects that result from the failure to disclose.

C.S.H.B. 2901 prohibits the bill's provisions with regard to contractor responsibility for the construction or repair of an improvement to real property from being waived by a contractor, subcontractor, or owner on a public contract. The bill prohibits those provisions from being waived on a private contract except by written agreement. The bill sets out required conditions under which such a written agreement is enforceable and establishes that a purported waiver on a private contract in violation of applicable provisions is void. The bill's provisions with regard to contractor responsibility do not apply to a contract entered into by a person, including a parent, subsidiary, affiliated entity, joint venture partner, or owner of the person, for the construction or repair of a critical infrastructure facility owned or operated by the person or any building, structure, improvement, appurtenance, or other facility owned by the person that is necessary to the business operations associated with the facility.

C.S.H.B. 2901 amends the Government Code to prohibit an applicable governmental entity from requiring in a contract for engineering or architectural services related to the construction or repair of an improvement to real property, or in a contract related to the construction or repair of an improvement to real property that contains engineering or architectural services as a component part, that such services be performed to a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances. The bill expressly does not prevent a party to a contract for engineering or architectural services from enforcing specific obligations in the contract that are separate from the standard of care.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2901 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 includes an exemption from application of its provisions for a contract for the construction or repair of certain critical infrastructure facilities.

The substitute narrows the applicability of the bill’s waiver provisions by setting out specific prohibitions against its provisions relating to contractor responsibility being waived by a contractor, subcontractor, or owner on a public contract or being waived on a private contract except by a written agreement meeting certain requirements. The substitute provides that a waiver that violates these private project waiver provisions is void.

The substitute requires a contractor to make certain defect disclosures and sets out possible consequences for failure to so disclose.

The substitute includes a provision prohibiting an applicable governmental entity from requiring engineering or architectural services to be performed at a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances in certain contracts for those services. The substitute includes a provision that expressly does not prevent a party to such a contract from enforcing specific obligations in the contract that are separate from the standard of care.