86R2381 AJA-D

By:  Leach H.B. No. 1999

A BILL TO BE ENTITLED

AN ACT

relating to certain construction liability claims concerning public buildings and public works.

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

SECTION 1.  Subtitle F, Title 10, Government Code, is amended by adding Chapter 2272 to read as follows:

CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 2272.001.  DEFINITIONS. In this chapter:

(1)  "Action" means a court or judicial proceeding or an arbitration. The term does not include an administrative action.

(2)  "Construction" includes:

(A)  the initial construction of an improvement to real property;

(B)  the construction of an addition to an improvement to real property; or

(C)  the repair, alteration, or remodeling of an improvement to real property.

(3)  "Construction defect" means a deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction, that is the result of:

(A)  the use of defective materials, products, or components in the construction;

(B)  a violation of a building code applicable by law to the construction;

(C)  a failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; or

(D)  a failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

(4)  "Contractor" means a person legally engaged in the business of designing, developing, constructing, manufacturing, repairing, altering, or remodeling improvements to real property.

(5)  "Design professional" means a person licensed as an architect, interior designer, landscape architect, engineer, surveyor, or geologist.

(6)  "Governmental entity" means:

(A)  the state;

(B)  a municipality, county, public school district, or special-purpose district or authority;

(C)  a district, county, or justice of the peace court;

(D)  a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(E)  the legislature or a legislative agency; or

(F)  the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

(7)  "Subcontractor" means a contractor directly retained and compensated by another contractor to perform labor or perform labor and supply materials in the construction.

(8)  "Supplier" means a person who provides only materials, equipment, or other supplies for the construction.

Sec. 2272.002.  APPLICABILITY OF CHAPTER. (a) This chapter applies only to a claim:

(1)  for:

(A)  damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work; or

(B)  indemnification for damages described by Paragraph (A);

(2)  asserted by a governmental entity with an interest in the public building or public work affected by the alleged construction defect, including a governmental entity whose interest arose from the purchase of the affected public building or public work after any relevant construction contract was entered into or relevant activity was performed; and

(3)  asserted against a contractor, subcontractor, supplier, or design professional.

(b)  This chapter does not apply to:

(1)  a claim for personal injury, survival, or wrongful death;

(2)  a claim involving the construction of residential property covered under Chapter 27, Property Code;

(3)  a contract entered into by the Texas Department of Transportation; or

(4)  a project that receives money from a state or federal highway fund.

Sec. 2272.003.  INSPECTION AND REPORT. (a) Before bringing an action asserting a claim to which this chapter applies, the governmental entity must obtain from an independent third-party licensed professional engineer an inspection of the improvement affected by the alleged construction defect and a written report that:

(1)  identifies the specific construction defect on which the claim is based;

(2)  describes the present physical condition of the affected improvement; and

(3)  describes any modification, maintenance, or repairs to the improvement made by the governmental entity or others.

(b)  The governmental entity must provide written notice of the inspection required by this section to each party who is subject to the claim not later than the 10th day before the date the inspection will occur. The notice must:

(1)  identify the engineer who will conduct the inspection and prepare the report;

(2)  identify each specific area of the improvement to be inspected; and

(3)  include the date and time the inspection will occur.

(c)  Each party subject to the claim or the party's representative may attend the inspection required by this section.

Sec. 2272.004.  OPPORTUNITY TO CORRECT. Before bringing an action asserting a claim to which this chapter applies, the governmental entity must allow each party subject to the claim at least 150 days after the date the report required by Section 2272.003 is provided to the party to inspect and correct any construction defect or related condition identified in the report.

Sec. 2272.005.  TOLLING OF LIMITATIONS PERIOD. If the notice of inspection required by Section 2272.003 is provided during the final year of the limitations period applicable to the claim, the limitations period is tolled until the first anniversary of the date on which the notice is provided.

Sec. 2272.006.  ABATEMENT; DISMISSAL. (a) If a governmental entity brings an action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, the court, arbitrator, or other adjudicating authority may abate the action for not more than one year on a showing that the governmental entity bringing the action intends to comply with those sections.

(b)  Except as provided by Subsection (a), if a governmental entity brings an action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, the court, arbitrator, or other adjudicating authority shall dismiss the action. The dismissal may be with prejudice at the discretion of the court, arbitrator, or other adjudicating authority.

Sec. 2272.007.  RECOVERY OF INSPECTION COSTS. If an inspection and report obtained by a governmental entity under Section 2272.003 identifies a construction defect for which the governmental entity recovers damages, the damages awarded to the governmental entity against the party responsible for that construction defect may include amounts paid by the governmental entity to obtain the inspection and report with respect to identification of that construction defect.

Sec. 2272.008.  EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY. This chapter does not prohibit or limit a governmental entity from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

Sec. 2272.009.  INSURANCE TREATMENT OF CLAIM. If a party, in connection with a potential claim against the party, receives a written notice of an alleged construction defect or a report under Section 2272.003 identifying a construction defect and provides the notice or report to the party's insurer, the insurer shall 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.

SECTION 2.  (a) Chapter 2272, Government Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

(b)  Section 2272.009, Government Code, as added by this Act, applies only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2020.

SECTION 3.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.