86R25530 AJA-F

By:  Leach H.B. No. 2901

Substitute the following for H.B. No. 2901:

By:  White C.S.H.B. No. 2901

A BILL TO BE ENTITLED

AN ACT

relating to civil liability and responsibility for the consequences of defects in the plans, specifications, or related documents for the construction or repair of an improvement to real property.

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

SECTION 1.  Title 4, Business & Commerce Code, is amended by adding Chapter 59 to read as follows:

CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001.  DEFINITIONS. In this chapter:

(1)  "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.

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

(3)  "Critical infrastructure facility" has the meaning assigned by Section 423.0045, Government Code.

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

SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

Sec. 59.051.  APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a contract for the construction or repair of an improvement to real property.

(b)  This subchapter does not apply to a contract entered into by a 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 critical infrastructure facility. For purposes of this subsection, "person" includes a parent, subsidiary, affiliated entity, joint venture partner, or owner of the person.

Sec. 59.052.  LIMITATION ON CONTRACTOR'S LIABILITY AND RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor 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 provided to the contractor by:

(1)  the person with whom the contractor entered into the contract; or

(2)  another person on behalf of the person with whom the contractor entered into the contract.

(b)  A contractor must disclose in writing to the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications, or other design or bid documents discovered by the contractor before or during construction.

(c)  A contractor who fails to disclose a condition as required by Subsection (b) may be liable for defects that result from the failure to disclose.

Sec. 59.053.  WAIVER OF SUBCHAPTER ON PUBLIC PROJECT. This subchapter may not be waived by a contractor, subcontractor, or owner on a public contract.

Sec. 59.054.  WAIVER OF SUBCHAPTER ON PRIVATE PROJECT. (a) Except as provided by Subsection (b), this subchapter may not be waived on a private contract.

(b)  This subchapter may be waived only by written agreement. To be enforceable, the written agreement must:

(1)  clearly and prominently state that the parties agree to waive specifically this subchapter in its entirety;

(2)  identify the specific plans, specifications, or other design or bid documents to which the waiver applies; and

(3)  be signed by the contractor on a date that is not earlier than the date the contractor receives the plans, specifications, or other design or bid documents to which the waiver applies.

(c)  A purported waiver of this subchapter in violation of this section is void.

SECTION 2.  Subchapter A, Chapter 2254, Government Code, is amended by adding Section 2254.0041 to read as follows:

Sec. 2254.0041.  ARCHITECT'S OR ENGINEER'S STANDARD OF CARE. (a) A governmental entity may not require 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 the engineering or architectural 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.

(b)  Nothing in this section prevents 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.

SECTION 3.  (a)  The changes in law made by this Act apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act 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)  An original contract for the construction or repair of an improvement to real property with the owner of an interest in real property that is entered into before the effective date of this Act, and a subcontract or purchase order for providing labor or materials associated with that original contract, 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 4.  This Act takes effect September 1, 2019.