

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

1 components in the construction;

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

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

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

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

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

18 (6) "Governmental entity" means:

19 (A) the state;

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

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

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

1 (E) the legislature or a legislative agency; or

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

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

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

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

12 (1) for:

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

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

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

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

27 (b) This chapter does not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 2272.004. OPPORTUNITY TO CORRECT. Before bringing an
8 action asserting a claim to which this chapter applies, the
9 governmental entity must allow each party subject to the claim at
10 least 150 days after the date the report required by Section
11 2272.003 is provided to the party to inspect and correct any
12 construction defect or related condition identified in the report.

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

18 Sec. 2272.006. ABATEMENT; DISMISSAL. (a) If a
19 governmental entity brings an action asserting a claim to which
20 this chapter applies without complying with Sections 2272.003 and
21 2272.004, the court, arbitrator, or other adjudicating authority
22 may abate the action for not more than one year on a showing that the
23 governmental entity bringing the action intends to comply with
24 those sections.

25 (b) Except as provided by Subsection (a), if a governmental
26 entity brings an action asserting a claim to which this chapter
27 applies without complying with Sections 2272.003 and 2272.004, the

1 court, arbitrator, or other adjudicating authority shall dismiss
2 the action. The dismissal may be with prejudice at the discretion
3 of the court, arbitrator, or other adjudicating authority.

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

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

17 Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in
18 connection with a potential claim against the party, receives a
19 written notice of an alleged construction defect or a report under
20 Section 2272.003 identifying a construction defect and provides the
21 notice or report to the party's insurer, the insurer shall treat the
22 provision of the notice or report to the party as the filing of a
23 suit asserting that claim against the party for purposes of the
24 relevant policy terms.

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

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

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