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H.B. No. 2899

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Subtitle Z, Title 6, Transportation Code, is amended by adding Chapter 473 to read as follows:

CHAPTER 473. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

Sec. 473.001. DEFINITIONS. In this chapter:

(1) "Contract" means a contract for the construction or repair of a road or highway of any number of lanes, with or without grade separation, owned or operated by a governmental entity and any improvement, extension, or expansion to that road or highway, including:

(A) an improvement to relieve traffic congestion and promote safety;

(B) a bridge, tunnel, overpass, underpass, interchange, service road ramp, entrance plaza, approach, or tollhouse; and

(C) a parking area or structure, rest stop, park, or other improvement or amenity the governmental entity considers necessary, useful, or beneficial for the operation of a road or highway.

1           (2) "Contractor" means a person who is required to  
2 perform work under a contract.

3           (3) "Governmental entity" means:

4                   (A) the Texas Department of Transportation; or

5                   (B) any political subdivision of the state that  
6 is acting under Chapter 284, 366, 370, or 431.

7           (4) "Project specifications" means plans, reports,  
8 designs, or specifications prepared by a governmental entity or by  
9 a third party retained by a governmental entity under a separate  
10 contract.

11           Sec. 473.002. APPLICABILITY. This chapter applies to a  
12 governmental entity authorized by state law to make a contract and  
13 to any contractor with whom a governmental entity enters into a  
14 contract.

15           Sec. 473.003. LIMITATION ON CONTRACTOR'S RESPONSIBILITY  
16 FOR CERTAIN DEFECTS. (a) A contractor who enters into a contract  
17 with a governmental entity is not civilly liable or otherwise  
18 responsible for the accuracy, adequacy, sufficiency, suitability,  
19 or feasibility of any project specifications and is not liable for  
20 any damage to the extent caused by:

21                   (1) a defect in those project specifications; or

22                   (2) the errors, omissions, or negligent acts of a  
23 governmental entity, or of a third party retained by a governmental  
24 entity under a separate contract, in the rendition or conduct of  
25 professional duties arising out of or related to the project  
26 specifications.

27           (b) A covenant or promise contained in a contract governed

1 by this chapter is void and unenforceable to the extent that the  
2 covenant or promise conflicts with Subsection (a).

3 (c) This section does not apply to a consultant retained in  
4 a separate contract by a governmental entity to expressly monitor  
5 the compliance with project specifications by another contractor  
6 with whom the governmental entity has entered into a contract.

7 (d) This section does not relieve a contractor from the  
8 contractor's obligations or liability under a contract with a  
9 governmental entity.

10 Sec. 473.004. ENGINEER'S OR ARCHITECT'S STANDARD OF CARE. A  
11 governmental entity may not require that engineering or  
12 architectural services be performed to a level of professional  
13 skill and care beyond the level that would be provided by an  
14 ordinarily prudent engineer or architect with the same professional  
15 license and under the same or similar circumstances in a contract:

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

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

24 (b) A contract subject to Chapter 473, Transportation Code,  
25 as added by this Act, with a governmental entity that is entered  
26 into before the effective date of this Act, and any subcontract or  
27 purchase order for furnishing labor or materials associated with

1 that contract, regardless of whether the subcontract or purchase  
2 order is entered into before, on, or after the effective date of  
3 this Act, is governed by the law in effect when the original  
4 contract was entered into, and the former law is continued in effect  
5 for that purpose.

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