

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

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

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

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

8 CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 59.001. DEFINITIONS. In this chapter:

11 (1) "Construction" includes:

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

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

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

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

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

23 (4) "Subcontractor" means a contractor directly
24 retained and compensated by another contractor to perform labor or

1 perform labor and supply materials in the construction.

2 SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

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

6 (b) This subchapter does not apply to a contract entered
7 into by a person for the construction or repair of a critical
8 infrastructure facility owned or operated by the person or any
9 building, structure, improvement, appurtenance, or other facility
10 owned by the person that is necessary to the business operations
11 associated with the critical infrastructure facility. For purposes
12 of this subsection, "person" includes a parent, subsidiary,
13 affiliated entity, joint venture partner, or owner of the person.

14 Sec. 59.052. LIMITATION ON CONTRACTOR'S LIABILITY AND
15 RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor is not
16 responsible for the consequences of defects in and may not warranty
17 the accuracy, adequacy, sufficiency, or suitability of plans,
18 specifications, or other design or bid documents provided to the
19 contractor by:

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

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

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

1 construction.

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

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

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

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

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

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

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

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

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

25 Sec. 2254.0041. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

26 (a) A governmental entity may not require in a contract for
27 engineering or architectural services related to the construction

1 or repair of an improvement to real property, or in a contract
2 related to the construction or repair of an improvement to real
3 property that contains engineering or architectural services as a
4 component part, that the engineering or architectural services be
5 performed to a level of professional skill and care beyond that
6 which would be provided by an ordinarily prudent engineer or
7 architect with the same professional license under the same or
8 similar circumstances.

9 (b) Nothing in this section prevents a party to a contract
10 for engineering or architectural services from enforcing specific
11 obligations in the contract that are separate from the standard of
12 care.

13 SECTION 3. (a) The changes in law made by this Act apply
14 only to a contract entered into on or after the effective date of
15 this Act. A contract entered into before the effective date of this
16 Act is governed by the law in effect when the contract was entered
17 into, and the former law is continued in effect for that purpose.

18 (b) An original contract for the construction or repair of
19 an improvement to real property with the owner of an interest in
20 real property that is entered into before the effective date of this
21 Act, and a subcontract or purchase order for providing labor or
22 materials associated with that original contract, whether the
23 subcontract or purchase order is entered into before, on, or after
24 the effective date of this Act, is governed by the law in effect
25 when the original contract was entered into, and the former law is
26 continued in effect for that purpose.

27 SECTION 4. This Act takes effect September 1, 2019.