

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Leach, Cyrier, Lucio III, et al.

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 engaged in the  
13 business of developing, constructing, fabricating, repairing,  
14 altering, or remodeling improvements to real property.

15 (5) "Design professional" means an individual  
16 registered as an architect under Chapter 1051, Occupations Code, or  
17 a person licensed as an engineer under Chapter 1001, Occupations  
18 Code.

19 (6) "Governmental entity" means:

20 (A) the state;

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

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

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

1 Education Code;

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

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

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

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

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

13 (1) for:

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

18 (B) indemnity or contribution for damages  
19 described by Paragraph (A);

20 (2) asserted by a governmental entity with an interest  
21 in the public building or public work affected by the alleged  
22 construction defect; and

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

25 (b) This chapter does not apply to:

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

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

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

5           (4) a project that receives money from a state or  
6 federal highway fund; or

7           (5) a civil works project as defined by Section  
8 2269.351, Government Code.

9           Sec. 2272.003. REPORT. Before bringing an action asserting  
10 a claim to which this chapter applies, the governmental entity must  
11 provide each party with whom the governmental entity has a contract  
12 for the design or construction of an affected structure a written  
13 report by certified mail, return receipt requested, that clearly:

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

16           (2) describes the present physical condition of the  
17 affected structure; and

18           (3) describes any modification, maintenance, or  
19 repairs to the affected structure made by the governmental entity  
20 or others since the affected structure was initially occupied or  
21 used.

22           Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a)  
23 Before bringing an action asserting a claim to which this chapter  
24 applies, the governmental entity must allow each party with whom  
25 the governmental entity has a contract for the design or  
26 construction of an affected structure and who is subject to the  
27 claim and any known subcontractor or supplier who is subject to the

1 claim:

2 (1) a reasonable opportunity to inspect any  
3 construction defect or related condition identified in the report  
4 for a period of 30 days after sending the report required by Section  
5 2272.003; and

6 (2) at least 120 days after the inspection to:

7 (A) correct any construction defect or related  
8 condition identified in the report; or

9 (B) enter into a separate agreement with the  
10 governmental entity to correct any construction defect or related  
11 condition identified in the report.

12 (b) The governmental entity is not required to allow a party  
13 to make a correction or repair under Subsection (a) if:

14 (1) the party:

15 (A) is a contractor and cannot provide payment  
16 and performance bonds to cover the corrective work;

17 (B) cannot provide liability insurance or  
18 workers' compensation insurance;

19 (C) has been previously terminated for cause by  
20 the governmental entity; or

21 (D) has been convicted of a felony; or

22 (2) the governmental entity previously complied with  
23 the process required by Subsection (a) regarding a construction  
24 defect or related condition identified in the report and:

25 (A) the defect or condition was not corrected as  
26 required by Subsection (a)(2)(A) or an agreement under Subsection  
27 (a)(2)(B); or

1           (B) the attempt to correct the construction  
2 defect or related condition identified in the report resulted in a  
3 new construction defect or related condition.

4           Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS.

5 If the report and opportunity to correct required by Sections  
6 2272.003 and 2272.004 are provided during the final year of a  
7 limitations or repose period applicable to the claim, the  
8 limitations or repose period is tolled until the first anniversary  
9 of the date on which the report is provided.

10          Sec. 2272.006. DISMISSAL. (a) If a governmental entity  
11 brings an action asserting a claim to which this chapter applies  
12 without complying with Sections 2272.003 and 2272.004, the court,  
13 arbitrator, or other adjudicating authority shall dismiss the  
14 action without prejudice.

15          (b) If an action is dismissed without prejudice under  
16 Subsection (a) and the governmental entity brings a second action  
17 asserting a claim to which this chapter applies without complying  
18 with Sections 2272.003 and 2272.004, the court, arbitrator, or  
19 other adjudicating authority shall dismiss the action with  
20 prejudice.

21          Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report  
22 provided by a governmental entity under Section 2272.003 identifies  
23 a construction defect that is corrected under Section 2272.004 or  
24 for which the governmental entity recovers damages, the party  
25 responsible for that construction defect shall pay the reasonable  
26 amounts incurred by the governmental entity to obtain the report  
27 with respect to identification of that construction defect.

1        Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY.

2        This chapter does not prohibit or limit a governmental entity from  
3        making emergency repairs to the property as necessary to protect  
4        the health, safety, and welfare of the public or a building  
5        occupant.

6        Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in

7        connection with a potential claim against the party, receives a  
8        written notice of an alleged construction defect or a report under  
9        Section 2272.003 identifying a construction defect and provides the  
10       notice or report to the party's insurer, the insurer shall treat the  
11       provision of the notice or report to the party as the filing of a  
12       suit asserting that claim against the party for purposes of the  
13       relevant policy terms.

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

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

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

ADOPTED

MAY 21 2019

By: Brandon Coeghtor Atty. Gen.  
Secretary of the Senate

H.B. No. 1999

Substitute the following for H.B. No. 1999:

By: Brandon Coeghtor

C.S. H.B. No. 1999

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

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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;



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

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

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

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

14                   (5) "Design professional" means an individual  
15 registered as an architect under Chapter 1051, Occupations Code,  
16 or a person licensed as an engineer under Chapter 1001, Occupations  
17 Code.

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 of  
3 Criminal Appeals, a court of appeals, or the State Bar of Texas or  
4 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 real  
14 or personal property caused by an alleged construction defect in  
15 an improvement to real property that is a public building or public  
16 work; or

17                   (B) indemnity or contribution for damages  
18 described by 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; and

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

24                  (b) This chapter does not apply to:

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

27                   (2) a claim involving the construction of residential

1 property covered under Chapter 27, Property Code;

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

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

6 (5) a civil works project as defined by Section  
7 2269.351, Government Code.

8 Sec. 2272.003. REPORT. (a) Before bringing an action  
9 asserting a claim to which this chapter applies, the governmental  
10 entity must provide each party with whom the governmental entity  
11 has a contract for the design or construction of an affected  
12 structure a written report by certified mail, return receipt  
13 requested, that clearly:

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

16 (2) describes the present physical condition of the  
17 affected structure; and

18 (3) describes any modification, maintenance, or repairs  
19 to the affected structure made by the governmental entity or others  
20 since the affected structure was initially occupied or used.

21 (b) Not later than the fifth day after the date a contractor  
22 receives a report under Subsection (a), the contractor must provide  
23 a copy of the report to each subcontractor retained on the  
24 construction of the affected structure whose work is subject to  
25 the claim.

26 Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a)  
27 Before bringing an action asserting a claim to which this chapter

1 applies, the governmental entity must allow each party with whom  
2 the governmental entity has a contract for the design or  
3 construction of an affected structure and who is subject to the  
4 claim and any known subcontractor or supplier who is subject to  
5 the claim:

6 (1) a reasonable opportunity to inspect any  
7 construction defect or related condition identified in the report  
8 for a period of 30 days after sending the report required by  
9 Section 2272.003; and

10 (2) at least 120 days after the inspection to:

11 (A) correct any construction defect or related  
12 condition identified in the report; or

13 (B) enter into a separate agreement with the  
14 governmental entity to correct any construction defect or related  
15 condition identified in the report.

16 (b) The governmental entity is not required to allow a party  
17 to make a correction or repair under Subsection (a) if:

18 (1) the party:

19 (A) is a contractor and cannot provide payment and  
20 performance bonds to cover the corrective work;

21 (B) cannot provide liability insurance or workers'  
22 compensation insurance;

23 (C) has been previously terminated for cause by  
24 the governmental entity; or

25 (D) has been convicted of a felony; or

26 (2) the governmental entity previously complied with  
27 the process required by Subsection (a) regarding a construction

1 defect or related condition identified in the report and:

2 (A) the defect or condition was not corrected as  
3 required by Subsection (a) (2) (A) or an agreement under Subsection  
4 (a) (2) (B); or

5 (B) the attempt to correct the construction defect  
6 or related condition identified in the report resulted in a new  
7 construction defect or related condition.

8 Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS.

9 If the report and opportunity to correct required by Sections  
10 2272.003 and 2272.004 are provided during the final year of a  
11 limitations or repose period applicable to the claim, the  
12 limitations or repose period is tolled until the first anniversary  
13 of the date on which the report is provided.

14 Sec. 2272.006. DISMISSAL. (a) If a governmental entity  
15 brings an action asserting a claim to which this chapter applies  
16 without complying with Sections 2272.003 and 2272.004, the court,  
17 arbitrator, or other adjudicating authority shall dismiss the  
18 action without prejudice.

19 (b) If an action is dismissed without prejudice under  
20 Subsection (a) and the governmental entity brings a second action  
21 asserting a claim to which this chapter applies without complying  
22 with Sections 2272.003 and 2272.004, the court, arbitrator, or  
23 other adjudicating authority shall dismiss the action with  
24 prejudice.

25 Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report  
26 provided by a governmental entity under Section 2272.003  
27 identifies a construction defect that is corrected under Section

1 2272.004 or for which the governmental entity recovers damages,  
2 the party responsible for that construction defect shall pay the  
3 reasonable amounts incurred by the governmental entity to obtain  
4 the report with respect to identification of that construction  
5 defect.

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

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

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

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

25 SECTION 3. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2019.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 21, 2019**

**TO:** Honorable Dennis Bonnen, Speaker of the House, House of Representatives

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1999** by Leach (Relating to certain construction liability claims concerning public buildings and public works.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would add Government Code, Chapter 2272, relating to certain construction liability claims. Provisions of the bill would apply to claims for real or personal property damages caused by alleged construction defects as asserted by the public entity affected by the construction defect against a contractor and would exclude claims involving personal injury, claims involving residential property, Texas Department of Transportation contracts, projects receiving money from state or federal highway funds, or certain civil works projects.

Provisions of the bill would require an inspection and report by a licensed engineer identifying the defect, current physical condition of the affected improvements, and descriptions of any modifications or maintenance made by the government entity before a governmental entity brings action asserting a claim. The bill would allow the government entity to recover report costs if the report identifies a construction defect that is either corrected or for which the entity recovers damages.

**Local Government Impact**

According to the Texas Association of Counties, the bill would have a fiscal impact on counties, but that cost cannot be determined at this time. Additional costs incurred from the bill would depend on the number of contested liability claims, and be incurred only on an as-needed, case-by-case basis.

**Source Agencies:**     303 Facilities Commission, 454 Department of Insurance, 720 The University of Texas System Administration, 802 Parks and Wildlife Department, 808 Historical Commission

**LBB Staff:**            WP, SD, CMa, BRi, SLE, JQ, AF, LCO, TBo, CP, JMO



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 14, 2019**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1999** by Leach (relating to certain construction liability claims concerning public buildings and public works.), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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**LBB Staff:**        WP, CMa, BRi, SLE, JQ, AF, LCO, TBo, CP, JMO

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 10, 2019**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1999** by Leach (Relating to certain construction liability claims concerning public buildings and public works.), **As Engrossed**

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**LBB Staff:**        WP, CMa, BRi, SLE, JQ, AF, LCO, TBo, CP, JMO

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**April 16, 2019**

**TO:** Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1999** by Leach (relating to certain construction liability claims concerning public buildings and public works.), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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**LBB Staff:**    WP, SLE, JQ, BRi, AF, LCO, TBo, CP, JMO

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**March 11, 2019**

**TO:** Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1999** by Leach (Relating to certain construction liability claims concerning public buildings and public works.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would add Government Code, Chapter 2272, relating to certain construction liability claims. Provisions of the bill would apply to claims for real or personal property damages caused by alleged construction defects as asserted by the public entity affected by the construction defect against a contractor and would exclude claims involving personal injury, claims involving residential property, Texas Department of Transportation contracts, or projects receiving money from state or federal highway funds.

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