

BILL ANALYSIS

Senate Research Center
87R1648 AJA-F

S.B. 219
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State Affairs
3/5/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 1907 Texas Supreme Court case, *Loneragan v. San Antonio Loan & Trust*, the court held that it was the responsibility of Loneragan, the builder, to reconstruct a collapsed building even though the collapse was due to a fatal defect in the design plans and specifications prepared by the architect of the owner and provided to Loneragan by the owner, San Antonio Loan & Trust. In the 2012 Texas Supreme Court case, *El Paso Field Services v. Mastec*, the court reaffirmed its decision in *Loneragan*.

In 1918, the United States Supreme Court ruled on a question similar to the Loneragan case in *United States v. Spearin* and came to a different conclusion, holding that it is not the builder's responsibility to determine the sufficiency of plans and specifications provided to it by the project owner. Since that ruling, 36 states and the District of Columbia follow the *Spearin* decision, not holding the builder liable for defective plans and specifications provided to the builder by someone else.

In Texas, while it seems reasonable for a builder to rely on plans, specifications, and other documents provided to the builder, if the work is defective due to an error in the plans and specifications, the builder bears the risk of liability for the defective plans.

S.B. 219 provides that a builder is not responsible for the consequences of defects in design or bid documents provided to the builder by the person with whom the builder has entered into a construction contract. It also prevents an owner from requiring a builder to waive this protection by contract.

As proposed, S.B. 219 amends current law 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 59, as follows:

CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.0001. DEFINITIONS. Defines "construction," "contractor," "critical infrastructure facility," and "subcontractor."

SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

Sec. 59.0051. **APPLICABILITY OF SUBCHAPTER.** (a) Provides that this subchapter applies only to a contract for the construction or repair of an improvement to real property.

(b) Provides that 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. Provides that, for purposes of this subsection, "person" includes a parent, subsidiary, affiliated entity, joint venture partner, or owner of the person.

Sec. 59.0052. **LIMITATION ON CONTRACTOR'S LIABILITY AND RESPONSIBILITY FOR CERTAIN DEFECTS.** (a) Provides that 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 the person, or another person on behalf of the person, with whom the contractor entered into the contract.

(b) Requires a contractor to 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) Provides that 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. 59.0053. **WAIVER PROHIBITED.** Prohibits this subchapter from being waived by a contractor, subcontractor, or owner. Provides that a purported waiver of this subchapter in violation of this section is void.

SECTION 2. Amends Subchapter A, Chapter 2254, Government Code, by adding Section 2254.0041, as follows:

Sec. 2254.0041. **ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.** (a) Prohibits a governmental entity from requiring in a contract for architectural or engineering 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 architectural or engineering services as a component part, that the architectural or engineering services be performed to a level of professional skill and care beyond that which would be provided by an ordinarily prudent architect or engineer with the same professional license under the same or similar circumstances.

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

SECTION 3. (a) Makes application of this Act prospective.

(b) Provides that 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. Effective date: September 1, 2021.