

A BILL TO BE ENTITLED

AN ACT

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.

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

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

CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.0001. DEFINITIONS. In this chapter:

(1) "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.

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

(3) "Critical infrastructure facility" has the meaning assigned by Section 423.0045, Government Code, provided that the absence of fencing or signage described in the definition provided by that section does not disqualify an item listed in that

1 definition from being classified or treated as a critical
2 infrastructure facility for purposes of this chapter. The term
3 includes:

4 (A) pipelines and pipeline appurtenances or
5 facilities, including pipes, valves, meters, pumps, compressors,
6 treating and processing facilities, cathodic protection
7 facilities, and any other equipment, facilities, devices,
8 structures, and buildings used or intended for use in the
9 gathering, transportation, treating, or processing of oil, gas, or
10 other minerals, and the liquefied or gaseous substances,
11 constituents, products, or mixtures derived from those minerals
12 through refining, processing, or other methods;

13 (B) utility-scale equipment or facilities to
14 transmit or distribute electricity;

15 (C) utility-scale water or wastewater storage,
16 treatment, or transmission facilities; and

17 (D) facilities used to manufacture or produce
18 transportation fuels and similar products including gasoline,
19 kerosene, distillate fuel oils, residual fuel oils, lubricants,
20 asphalt, propane, ethanol, biodiesel, and renewable diesel.

21 (4) "Involved contractor contract" means a contract in
22 which a single contractor agrees to:

23 (A) construct, repair, alter, or remodel an
24 improvement to real property; and

25 (B) be responsible for the development of plans,
26 specifications, or other design or bid documents used by the
27 contractor to construct, repair, alter, or remodel the improvement.

1 SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

2 Sec. 59.0051. APPLICABILITY OF SUBCHAPTER. (a) This
3 subchapter applies only to a contract for the construction or
4 repair of an improvement to real property.

5 (b) This subchapter does not apply to a contract entered
6 into by a person for the construction or repair of a critical
7 infrastructure facility owned or operated by the person or any
8 building, structure, improvement, appurtenance, or other facility
9 owned by the person that is necessary to the operation of and
10 directly related to the critical infrastructure facility. For
11 purposes of this subsection, "person" has the meaning assigned by
12 Section 311.005, Government Code, and includes a parent,
13 subsidiary, affiliated entity, joint venture partner, or owner of
14 the person.

15 (c) This chapter does not apply to the construction, repair,
16 alteration, or remodeling of an improvement to real property if:

17 (1) the construction, repair, alteration, or
18 remodeling is performed under an involved contractor contract; and

19 (2) the part of the plans, specifications, or other
20 design or bid documents for which the contractor is responsible
21 under the contract is the part alleged to be defective.

22 (d) This chapter does not apply to a contract between a
23 person and a contractor under which the contractor agrees only to
24 review plans, specifications, or other design or bid documents but
25 is not responsible for any portion of the construction, repair,
26 alteration, or remodeling of the improvement to the real property.

27 Sec. 59.0052. LIMITATION ON CONTRACTOR'S LIABILITY AND

1 RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor is not
2 responsible for the consequences of defects in and may not warranty
3 the accuracy, adequacy, sufficiency, or suitability of plans,
4 specifications, or other design or bid documents provided to the
5 contractor by:

6 (1) the person with whom the contractor entered into
7 the contract; or

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

10 (b) A contractor must, within a reasonable time of learning
11 of the defect, disclose in writing to the person with whom the
12 contractor enters into a contract the existence of any known defect
13 in the plans, specifications, or other design or bid documents that
14 is discovered by the contractor, or that reasonably should have
15 been discovered by the contractor using ordinary diligence, before
16 or during construction.

17 (c) A contractor who fails to disclose a condition as
18 required by Subsection (b) may be liable for the consequences of
19 defects that result from the failure to disclose.

20 Sec. 59.0053. STANDARD OF CARE FOR CERTAIN DESIGNS. Design
21 services provided under an involved contractor contract are subject
22 to the same standard of care requirements provided in Section
23 130.0021, Civil Practice and Remedies Code.

24 Sec. 59.0054. WAIVER PROHIBITED. This subchapter may not
25 be waived by a contractor, subcontractor, or owner. A purported
26 waiver of this subchapter in violation of this section is void.

27 SECTION 2. The heading to Chapter 130, Civil Practice and

1 Remedies Code, is amended to read as follows:

2 CHAPTER 130. LIABILITY PROVISIONS [~~INDEMNIFICATION~~] IN CERTAIN
3 CONSTRUCTION CONTRACTS

4 SECTION 3. Chapter 130, Civil Practice and Remedies Code,
5 is amended by adding Section 130.0021 to read as follows:

6 Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

7 (a) A construction contract for architectural or engineering
8 services or a contract related to the construction or repair of an
9 improvement to real property that contains architectural or
10 engineering services as a component part must require that the
11 architectural or engineering services be performed with the
12 professional skill and care ordinarily provided by competent
13 architects or engineers practicing under the same or similar
14 circumstances and professional license.

15 (b) If a contract described by Subsection (a) contains a
16 provision establishing a different standard of care than the
17 standard described by Subsection (a):

18 (1) the provision is void and unenforceable; and

19 (2) the standard of care described by Subsection (a)
20 applies to the performance of the architectural or engineering
21 services.

22 (c) Section 130.004 does not limit the applicability of this
23 section.

24 SECTION 4. Section 130.004, Civil Practice and Remedies
25 Code, is amended to read as follows:

26 Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)

27 Except as provided by Section 130.002(b) or 130.0021, this chapter

1 does not apply to an owner of an interest in real property or
2 persons employed solely by that owner.

3 (b) Except as provided by Section [130.002\(b\)](#) or 130.0021,
4 this chapter does not prohibit or make void or unenforceable a
5 covenant or promise to:

6 (1) indemnify or hold harmless an owner of an interest
7 in real property and persons employed solely by that owner; or

8 (2) allocate, release, liquidate, limit, or exclude
9 liability in connection with a construction contract between an
10 owner or other person for whom a construction contract is being
11 performed and a registered architect or licensed engineer.

12 SECTION 5. (a) The changes in law made by this Act apply
13 only to a contract entered into on or after the effective date of
14 this Act. A contract entered into before the effective date of this
15 Act is governed by the law in effect when the contract was entered
16 into, and the former law is continued in effect for that purpose.

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

26 SECTION 6. This Act takes effect September 1, 2021.