

By: Hughes S.B. No. 219
(Leach, Gervin-Hawkins, Lucio III, Holland, et al.)

Substitute the following for S.B. No. 219:

By: Schofield C.S.S.B. No. 219

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. 59.001. 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" includes:

(A) a petroleum or alumina refinery;

(B) an electrical power generating facility, substation, switching station, or control center;

- 1 (C) a chemical, polymer, or rubber manufacturing
2 facility;
- 3 (D) a water intake structure, water treatment
4 facility, wastewater treatment plant, or pump station;
- 5 (E) a natural gas compressor station;
- 6 (F) a liquid natural gas terminal or storage
7 facility;
- 8 (G) a telecommunications central switching
9 office or any structure used as part of a system to provide wired or
10 wireless telecommunications services;
- 11 (H) a port, railroad switching yard, trucking
12 terminal, or other freight transportation facility;
- 13 (I) a gas processing plant, including a plant
14 used in the processing, treatment, or fractionation of natural gas;
- 15 (J) a transmission facility used by a federally
16 licensed radio or television station;
- 17 (K) a steelmaking facility that uses an electric
18 arc furnace to make steel;
- 19 (L) a dam that is classified as a high hazard by
20 the Texas Commission on Environmental Quality;
- 21 (M) a concentrated animal feeding operation, as
22 defined by Section 26.048, Water Code;
- 23 (N) any portion of an aboveground oil, gas, or
24 chemical pipeline;
- 25 (O) an oil or gas drilling site;
- 26 (P) a group of tanks used to store crude oil, such
27 as a tank battery;

- 1 (Q) an oil, gas, or chemical production facility;
2 (R) an oil or gas wellhead;
3 (S) any oil and gas facility that has an active
4 flare;
5 (T) pipelines and pipeline appurtenances or
6 facilities, including pipes, valves, meters, pumps, compressors,
7 treating and processing facilities, cathodic protection
8 facilities, and any other equipment, facilities, devices,
9 structures, and buildings used or intended for use in the
10 gathering, transportation, treating, storage, or processing of
11 CO2, oil, gas, or other minerals, and the liquefied or gaseous
12 substances, constituents, products, or mixtures derived from those
13 minerals through refining, processing, or other methods;
14 (U) utility-scale equipment or facilities to
15 transmit or distribute electricity;
16 (V) utility-scale water or wastewater storage,
17 treatment, or transmission facilities;
18 (W) facilities used to manufacture or produce
19 transportation fuels and similar products, including gasoline,
20 kerosene, distillate fuel oils, residual fuel oils, lubricants,
21 asphalt, propane, ethanol, biodiesel, and renewable diesel; and
22 (X) commercial airport facilities used for the
23 landing, parking, refueling, shelter, or takeoff of aircraft,
24 maintenance or servicing of aircraft, aircraft equipment storage,
25 or navigation of aircraft.

26 (4) "Design" means work that is required under Title
27 6, Occupations Code, to be performed by or under the supervision of

1 a person licensed or registered under the statute.

2 (5) "Design-build contract" means a contract in which
3 a contractor agrees to:

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

6 (B) be responsible for the development of plans,
7 specifications, or other design documents used by the contractor to
8 construct, repair, alter, or remodel the improvement.

9 (6) "Engineering, procurement, and construction
10 contract" means a construction contract where the contractor is
11 responsible for all of the engineering, procurement, and
12 construction activities to deliver the completed project.

13 Sec. 59.002. APPLICABILITY OF CHAPTER. (a) This chapter
14 applies only to a contract for the construction or repair of an
15 improvement to real property.

16 (b) This chapter does not apply to a contract entered into
17 by a person for the construction or repair of a critical
18 infrastructure facility owned or operated by the person or any
19 building, structure, improvement, appurtenance, or other facility
20 owned by the person that is necessary to the operation of and
21 directly related to the critical infrastructure facility. For
22 purposes of this subsection, "person" has the meaning assigned by
23 Section 311.005, Government Code, and includes a parent,
24 subsidiary, affiliated entity, joint venture partner, or owner of
25 the person.

26 (c) Except as provided by Section 59.052, this chapter does
27 not apply to the construction, repair, alteration, or remodeling of

1 an improvement to real property if:

2 (1) the construction, repair, alteration, or
3 remodeling is performed under a design-build contract and the part
4 of the plans, specifications, or other design documents for which
5 the contractor is responsible under the contract is the part
6 alleged to be defective; or

7 (2) the construction, repair, alteration, or
8 remodeling is performed under an engineering, procurement, and
9 construction contract and the part of the plans, specifications, or
10 other design documents for which the contractor is responsible
11 under the contract is the part alleged to be defective.

12 (d) Except as provided by Section 59.052, this chapter does
13 not apply to the portion of a contract between a person and a
14 contractor under which the contractor agrees to provide input and
15 guidance on plans, specifications, or other design documents to the
16 extent that:

17 (1) the contractor's input and guidance are provided
18 as the signed and sealed work product of a person licensed or
19 registered under Title 6, Occupations Code; and

20 (2) the work product is incorporated into the plans,
21 specifications, or other design documents used in construction.

22 Sec. 59.003. WAIVER PROHIBITED. This chapter may not be
23 waived. A purported waiver of this chapter in violation of this
24 section is void.

25 SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

26 Sec. 59.051. LIMITATION ON CONTRACTOR'S LIABILITY AND
27 RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor is not

1 responsible for the consequences of design defects in and may not
2 warranty the accuracy, adequacy, sufficiency, or suitability of
3 plans, specifications, or other design documents provided to the
4 contractor by a person other than the contractor's agents,
5 contractors, fabricators, or suppliers, or its consultants, of any
6 tier.

7 (b) A contractor must, within a reasonable time of learning
8 of a defect, inaccuracy, inadequacy, or insufficiency in the plans,
9 specifications, or other design documents, disclose in writing to
10 the person with whom the contractor enters into a contract the
11 existence of any known defect in the plans, specifications, or
12 other design documents that is discovered by the contractor, or
13 that reasonably should have been discovered by the contractor using
14 ordinary diligence, before or during construction. In this
15 subsection, ordinary diligence means the observations of the plans,
16 specifications, or other design documents or the improvement to
17 real property that a contractor would make in the reasonable
18 preparation of a bid or fulfillment of its scope of work under
19 normal circumstances. Ordinary diligence does not require that the
20 contractor engage a person licensed or registered under Title 6,
21 Occupations Code, or any other person with specialized skills. A
22 disclosure under this subsection is made in the contractor's
23 capacity as contractor and not as a licensed professional under
24 Title 6, Occupations Code.

25 (c) A contractor who fails to disclose a defect as required
26 by Subsection (b) may be liable for the consequences of defects that
27 result from the failure to disclose.

1 section.

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

4 Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)
5 Except as provided by Section 130.002(b) or 130.0021, this chapter
6 does not apply to an owner of an interest in real property or
7 persons employed solely by that owner.

8 (b) Except as provided by Section 130.002(b) or 130.0021,
9 this chapter does not prohibit or make void or unenforceable a
10 covenant or promise to:

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

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

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

22 (b) An original contract for the construction or repair of
23 an improvement to real property with the owner of an interest in
24 real property that is entered into before the effective date of this
25 Act, and a subcontract or purchase order for providing labor or
26 materials associated with that original contract, whether the
27 subcontract or purchase order is entered into before, on, or after

1 the effective date of this Act, is governed by the law in effect
2 when the original contract was entered into, and the former law is
3 continued in effect for that purpose.

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