

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.

(4) "Subcontractor" means a contractor directly 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. 59.0051. 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. 59.0052. 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. 59.0053. WAIVER PROHIBITED. This subchapter may not
6 be waived by a contractor, subcontractor, or owner. A purported
7 waiver of this subchapter in violation of this section is void.

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

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

11 (a) A governmental entity may not require in a contract for
12 architectural or engineering services related to the construction
13 or repair of an improvement to real property, or in a contract
14 related to the construction or repair of an improvement to real
15 property that contains architectural or engineering services as a
16 component part, that the architectural or engineering services be
17 performed to a level of professional skill and care beyond that
18 which would be provided by an ordinarily prudent architect or
19 engineer with the same professional license under the same or
20 similar circumstances.

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

25 SECTION 3. (a) The changes in law made by this Act apply
26 only to a contract entered into on or after the effective date of
27 this Act. A contract entered into before the effective date of this

1 Act is governed by the law in effect when the contract was entered
2 into, and the former law is continued in effect for that purpose.

3 (b) An original contract for the construction or repair of
4 an improvement to real property with the owner of an interest in
5 real property that is entered into before the effective date of this
6 Act, and a subcontract or purchase order for providing labor or
7 materials associated with that original contract, whether the
8 subcontract or purchase order is entered into before, on, or after
9 the effective date of this Act, is governed by the law in effect
10 when the original contract was entered into, and the former law is
11 continued in effect for that purpose.

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