

PUBLIC COMMENTS

HB 3069

HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE

Hearing Date: March 31, 2021 8:00 AM

Monty Wynn

Texas Municipal League

Austin, TX

Dear Chairman Leach:

I am writing on behalf of the Texas Municipal League to express our opposition to H.B. 3069 by Holland. The bill would, with certain exceptions, require a governmental entity to bring suit for damages against: (1) an architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than five years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment; and (2) a person who constructs or repairs an improvement to real property, not later than five years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement.

By significantly reducing the statute of repose, H.B. 3069 would limit a governmental entity's ability to seek redress for deficiencies in public projects. This causes concern because many of these problems will not become apparent until longer than five years. In fact, some of the most severe won't be discovered for many years after completion of the project. The purpose of the statute of repose is to provide certainty and to require the party responsible for a defect or unsafe condition to be responsible for it. The current period has been in place for decades, and reducing it will lead to increased litigation.

In sum, the bill would essentially shift the burden of defective design, construction, and repair from the accountable party to the taxpayers.

Thank you for your consideration and please do not hesitate to contact me with questions.

Sincerely,

Monty Wynn

Director, Grassroots and Legislative Services

Texas Municipal League

Perry Fowler

Texas Water Infrastructure Network (TXWIN)

Austin, TX

My name is Perry Fowler and I am the Executive Director and I would like to be on the record on behalf of TXWIN in support of this legislation.

Alexa Aragonez

City of Arlington

Arlington, TX

Printed on: April 4, 2021 7:15 PM

Dear Chairman Leach:

I am writing on behalf of the City of Arlington, Texas to express our opposition to H.B. 3069 by Holland. The bill would, with certain exceptions, require a governmental entity to bring suit for damages against: (1) an architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than five years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment; and (2) a person who constructs or repairs an improvement to real property, not later than five years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement.

By significantly reducing the statute of repose, H.B. 3069 would limit a governmental entity's ability to seek redress for deficiencies in public projects. The time period is shortened by half for governmental entities without any regard to the nature of the defect and how discoverable the defect. The public taxpayer will in the end suffer the consequences of the shortened limitations period. The purpose of the statute of repose is to provide certainty and to require the party responsible for a defect or unsafe condition to be responsible for it. The current period has been in place for decades and reducing it will lead to increased litigation. There is no reason why public projects should have half the time to bring such claims as opposed to a private project.

In sum, the bill would essentially shift the burden of defective design, construction, and repair from the accountable party to the taxpayers.

Thank you for your consideration and please do not hesitate to contact me with questions.

Sincerely,

Jay Warren
City of Arlington
Director of Communication and Legislative Affairs

Brie Franco, Intergovernmental Relations Officer
City of Austin
Austin, TX

City of Austin Comments

Honorable Chair and Members of the House Committee on Judiciary and Civil Jurisprudence:

The City of Austin requests that you vote no on H.B. 3069 for the following reasons.

The time afforded by current law is necessary to ensuring quality construction and should not be reduced. The statute of repose bars actions against a design professional or contractor after a certain period of time following the substantial completion of construction. Current law recognizes that a defect may not be discovered for several years by providing 10 years for defects to be discovered, allowing governmental and private entities to have the ability to protect their investments as well as community from any defects. Current law has allowed for that length of time because it is common that defects are not discovered for years, especially for large projects such as critical infrastructure projects that cities engage in regularly. The necessity for this length of time is acknowledged by the fact that TxDOT is exempt from the bill.

H.B. 3069 increases risk of exposure for latent defects not detectable upon inspection at the time the contract is completed. When there is an injury, damage, or loss to real or personal property, personal injury, wrongful death, contribution, or indemnity . . . arising out of a defective or unsafe condition of the real property, the improvement, or the equipment, this bill increases the likelihood by two-fold that a city or other governmental entity would not be able seek redress from the responsible parties, which may be the professional service providers like the architects or engineers who design the improvements, or against the contractors that construct them. This increased risk could also have a chilling effect on the construction of critical infrastructure and public facilities. The City believes that it is in the best interest of all of Texans that cities continue to build critical infrastructure and

Printed on: April 4, 2021 7:15 PM

other public facilities without taking on an increased risk, not equally borne by exempt entities and projects, for injuries or loss due to latent defects created by contracted parties.

For these reasons, the City of Austin asks that you vote no on H.B. 3069.