

BILL ANALYSIS

Senate Research Center

H.B. 2265
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

For governmental construction projects, contractual clauses dictating which party is responsible for delays are often nonnegotiable, meaning contractors must accept these clauses as is. Sometimes governmental entities—who often enjoy sovereign immunity protections and benefit from bureaucratic hurdles in the claims process—are shifting the risk, costs, and consequences of delays solely caused by them to private sector contractors who are accordingly not responsible. In other words, the governmental entity can unilaterally delay the project and the contractor must suffer the financial consequences of that delay without reimbursement or fair compensation. H.B. 2265 seeks to prohibit a governmental entity from utilizing contractual clauses in construction contracts to shift the consequences for delays it solely caused onto private sector contractors. This would help restore fairness and mutual enforceability of contractual clauses on government construction projects.

H.B. 2265 amends current law relating to the award of compensatory damages caused by certain delays under governmental construction contracts.

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 Subchapter Z, Chapter 2252, Government Code, by adding Section 2252.909, as follows:

Sec. 2252.909. COMPENSATORY DAMAGES CAUSED BY GOVERNMENTAL DELAYS IN CONSTRUCTION CONTRACTS. (a) Defines "compensatory damages," "contractor," and "governmental entity."

(b) Prohibits a provision of a construction contract between a governmental entity and a contractor from prohibiting the award of compensatory damages to the contractor for a delay to the extent that the delay is caused solely by the governmental entity or by a party for which the governmental entity is responsible.

(c) Provides that this section does not restrict, limit, or prohibit the inclusion of a contract provision in a construction contract prescribing requirements or conditions that are required to be met by a contractor to seek recovery of compensatory damages, including requirements or conditions relating to notice, justification, or a duty to mitigate or for demonstrating or proving the actual cost or schedule impact of a delay.

(d) Prohibits this section from being waived. Provides that a purported waiver of this section in violation of this subsection is void.

(e) Provides that this section does not apply to a construction contract for:

(1) services related to recovery or relief from a natural disaster involving the repair or renovation of a residence; or

(2) the construction or repair of a critical infrastructure facility, as that term is defined by Section 59.001 (Definitions), Business and Commerce Code, owned or operated by the governmental entity or any building, structure, improvement, appurtenance, or other facility owned by the governmental entity that is necessary to the operation of and directly related to the critical infrastructure facility.

SECTION 2. Makes application of Section 2252.909, Government Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2023.