

A BILL TO BE ENTITLED

AN ACT

relating to the award of compensatory damages caused by certain delays under governmental construction contracts.

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

SECTION 1. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.909 to read as follows:

Sec. 2252.909. COMPENSATORY DAMAGES CAUSED BY GOVERNMENTAL DELAYS IN CONSTRUCTION CONTRACTS. (a) In this section:

(1) "Compensatory damages" means the costs actually incurred by a contractor as a result of delay in the schedule that could not be reasonably mitigated by the contractor. The term does not include:

(A) special damages;

(B) consequential damages;

(C) home office overhead, except overhead costs for labor as defined in the applicable construction contract;

(D) profit or markup on indirect costs;

(E) the costs of performing additional work that are separately agreed to by the governmental entity and contractor in a construction contract; or

(F) indirect costs not related to the project in the applicable construction contract.

(2) "Contractor" means a person engaged in the business of developing, constructing, fabricating, repairing,

1 altering, or remodeling improvements to real property.

2 (3) "Governmental entity" means:

3 (A) the state;

4 (B) a municipality, county, public school
5 district, or special-purpose district or authority;

6 (C) a district, county, or justice of the peace
7 court;

8 (D) a board, commission, department, office, or
9 other agency in the executive branch of state government, including
10 an institution of higher education as defined by Section 61.003,
11 Education Code;

12 (E) the legislature or a legislative agency; or

13 (F) the Supreme Court of Texas, the Texas Court
14 of Criminal Appeals, a court of appeals, or the State Bar of Texas
15 or another judicial agency having statewide jurisdiction.

16 (b) A provision of a construction contract between a
17 governmental entity and a contractor may not prohibit the award of
18 compensatory damages to the contractor for a delay to the extent
19 that the delay is caused solely by the governmental entity or by a
20 party for which the governmental entity is responsible.

21 (c) This section does not restrict, limit, or prohibit the
22 inclusion of a contract provision in a construction contract
23 prescribing requirements or conditions that must be met by a
24 contractor to seek recovery of compensatory damages, including
25 requirements or conditions relating to notice, justification, or a
26 duty to mitigate or for demonstrating or proving the actual cost or
27 schedule impact of a delay.

1 (d) This section may not be waived. A purported waiver of
2 this section in violation of this subsection is void.

3 (e) This section does not apply to a construction contract
4 for:

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

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

15 SECTION 2. Section 2252.909, Government Code, as added by
16 this Act, applies only to a construction contract entered into on or
17 after the effective date of this Act.

18 SECTION 3. This Act takes effect September 1, 2023.