

1-1 By: Leach, Guillen, Martinez H.B. No. 2265  
 1-2 (Senate Sponsor - Hughes)  
 1-3 (In the Senate - Received from the House May 8, 2023;  
 1-4 May 9, 2023, read first time and referred to Committee on Business  
 1-5 & Commerce; May 23, 2023, reported favorably by the following vote:  
 1-6 Yeas 9, Nays 1; May 23, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18		X		
1-19	X			

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to the award of compensatory damages caused by certain  
 1-23 delays under governmental construction contracts.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subchapter Z, Chapter 2252, Government Code, is  
 1-26 amended by adding Section 2252.909 to read as follows:

1-27 Sec. 2252.909. COMPENSATORY DAMAGES CAUSED BY GOVERNMENTAL  
 1-28 DELAYS IN CONSTRUCTION CONTRACTS. (a) In this section:

1-29 (1) "Compensatory damages" means the costs actually  
 1-30 incurred by a contractor as a result of delay in the schedule that  
 1-31 could not be reasonably mitigated by the contractor. The term does  
 1-32 not include:

1-33 (A) special damages;

1-34 (B) consequential damages;

1-35 (C) home office overhead, except overhead costs  
 1-36 for labor as defined in the applicable construction contract;

1-37 (D) profit or markup on indirect costs;

1-38 (E) the costs of performing additional work that  
 1-39 are separately agreed to by the governmental entity and contractor  
 1-40 in a construction contract; or

1-41 (F) indirect costs not related to the project in  
 1-42 the applicable construction contract.

1-43 (2) "Contractor" means a person engaged in the  
 1-44 business of developing, constructing, fabricating, repairing,  
 1-45 altering, or remodeling improvements to real property.

1-46 (3) "Governmental entity" means:

1-47 (A) the state;

1-48 (B) a municipality, county, public school  
 1-49 district, or special-purpose district or authority;

1-50 (C) a district, county, or justice of the peace  
 1-51 court;

1-52 (D) a board, commission, department, office, or  
 1-53 other agency in the executive branch of state government, including  
 1-54 an institution of higher education as defined by Section 61.003,  
 1-55 Education Code;

1-56 (E) the legislature or a legislative agency; or

1-57 (F) the Supreme Court of Texas, the Texas Court  
 1-58 of Criminal Appeals, a court of appeals, or the State Bar of Texas  
 1-59 or another judicial agency having statewide jurisdiction.

1-60 (b) A provision of a construction contract between a  
 1-61 governmental entity and a contractor may not prohibit the award of

2-1 compensatory damages to the contractor for a delay to the extent  
2-2 that the delay is caused solely by the governmental entity or by a  
2-3 party for which the governmental entity is responsible.

2-4 (c) This section does not restrict, limit, or prohibit the  
2-5 inclusion of a contract provision in a construction contract  
2-6 prescribing requirements or conditions that must be met by a  
2-7 contractor to seek recovery of compensatory damages, including  
2-8 requirements or conditions relating to notice, justification, or a  
2-9 duty to mitigate or for demonstrating or proving the actual cost or  
2-10 schedule impact of a delay.

2-11 (d) This section may not be waived. A purported waiver of  
2-12 this section in violation of this subsection is void.

2-13 (e) This section does not apply to a construction contract  
2-14 for:

2-15 (1) services related to recovery or relief from a  
2-16 natural disaster involving the repair or renovation of a residence;  
2-17 or

2-18 (2) the construction or repair of a critical  
2-19 infrastructure facility, as that term is defined by Section 59.001,  
2-20 Business & Commerce Code, owned or operated by the governmental  
2-21 entity or any building, structure, improvement, appurtenance, or  
2-22 other facility owned by the governmental entity that is necessary  
2-23 to the operation of and directly related to the critical  
2-24 infrastructure facility.

2-25 SECTION 2. Section 2252.909, Government Code, as added by  
2-26 this Act, applies only to a construction contract entered into on or  
2-27 after the effective date of this Act.

2-28 SECTION 3. This Act takes effect September 1, 2023.

2-29 \* \* \* \* \*