

BILL ANALYSIS

H.B. 2203
By: Bumgarner
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill author has informed the committee that large construction contracts sometimes include third party liability clauses, which are designed to make subcontractors such as land surveyors, architects, and engineers liable for the negligence of third parties working on the same project. The 87th Texas Legislature enacted H.B. 2116, which prohibited design contracts for engineering and architectural services from including unreasonable, uninsurable risk-shifting duty-to-defend provisions and required contracts for those services to include a reasonable and insurable standard of care for professional services. However, the bill author has informed the committee that land surveyors were left out from the applicability of the bill, allowing them to still be held liable for negligence for which they are not in any way responsible. H.B. 2203 expands the scope of existing statute to grant land surveyors liability and contract protections that are currently available to engineering and architectural services. This action will prohibit agreements that force land surveyors to cover damages resulting from design flaws, mistakes by other professionals, or matters beyond their responsibilities, ensuring fairness throughout the construction industry.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2203 amends the Civil Practice and Remedies Code to extend the applicability of provisions making the following covenants or promises in a construction contract for an improvement to real property void and unenforceable to a construction contract for an improvement to real property involving a land surveyor:

- a covenant or promise in, in connection with, or collateral to a construction contract for a contractor to indemnify or hold harmless an applicable person or an agent, a servant, or an employee of the person from liability for damages related to certain defects or negligence and that arise from personal injury, property injury, death, or any other expense that arises from such injury or death;
- a covenant or promise in, in connection with, or collateral to a construction contract other than a contract for a single family or multifamily residence for an applicable person to indemnify or hold harmless an owner or an owner's agent or employee from liability for damage that is caused by or results from the negligence of the owner, agent, or employee; and

- a covenant or promise in, in connection with, or collateral to a construction contract for certain services related to an improvement to real property that requires the applicable person to defend a party, including a third party, against a claim wholly or partly on the negligence of, fault of, or breach of contract by the owner, the owner's agent or employee or another entity over which the owner exercises control, subject to the exception for a covenant to defend a party, including a third party for claim of negligent hiring of the person.

Accordingly, the bill revises provisions establishing that such statutory provisions governing liability in connection with a construction contract do not prohibit or make void or unenforceable certain covenants or promises and the exceptions to a contract or agreement regarding indemnification of an applicable person or an agent, servant, or employee of the person from liability to include a construction contract involving a land surveyor. The bill also extends to a contract for land surveying services the applicability of the following provisions:

- the authorization for a covenant or promise in, in connection with, or collateral to a contract for certain services related to an improvement to real property to provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the applicable person's liability; and
- the authorization for an owner that is a party to a contract for certain services related to an improvement to real property to require that the applicable person name the owner as an additional insured under any of the person's insurance coverage to the extent additional insureds are allowed under the policy and provide any defense to the owner provided by the policy to a named insured.

H.B. 2203 subjects a construction contract for land surveying services to the requirement for a construction contract for certain services to require those services to be performed with a specified standard of care and accordingly extends to a construction contract for land surveying services the applicability of the following provisions:

- provisions making void and unenforceable any provision in the contract establishing a different standard of care; and
- provisions making the specified standard of care applicable to the performance of those services.

H.B. 2203 amends the Local Government Code to extend the applicability of provisions making the following covenants or promises in a contract for certain services to which a governmental agency is a party void and unenforceable to a contract for land surveying services to which a governmental agency is a party:

- a covenant or promise in, in connection with, or collateral to the contract that the applicable person whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage, other than liability for damages caused by or resulting from certain acts; and
- a covenant or promise in, in connection with, or collateral to the contract that the applicable person whose work is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, the agency's employee, or other entity over which the agency exercises control, excluding the person or an agent, employee, or subconsultant of the person.

Accordingly, the bill extends to a contract for land surveying services to which a governmental agency is a party the applicability of the following provisions:

- the authorization for the governmental agency to require in the contract that the applicable person name the agency as an additional insured under the person's general liability insurance policy and provide any defense provided by the policy;
- the requirement that the governmental agency require the applicable person to perform the services with a specified standard of care and as expeditiously as is prudent considering the ordinary professional skill and care of a competent person;

- provisions making void and unenforceable a provision in the contract establishing a different standard of care and making the specified standard of care applicable to the performance of those services; and
- provisions establishing that nothing in such statutory provisions governing liability in connection with a contract for certain services to which a governmental agency is a party prohibits the agency from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

For purposes of the bill's provisions, "land surveyor" has the meaning assigned to that term under the Professional Land Surveying Practices Act.

H.B. 2203 applies only to a contract or covenant or promise in, in connection with, or collateral to a construction contract entered into on or after the bill's effective date. A contract or covenant or promise in, in connection with, or collateral to a construction contract entered into before that date is governed by the law applicable to the contract or covenant or promise immediately before that date, and that law is continued in effect for those purposes.

EFFECTIVE DATE

September 1, 2025.