

By: Bumgarner

H.B. No. 2203

A BILL TO BE ENTITLED

AN ACT

relating to liability for land surveying services in or in connection with certain construction or services contracts.

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

SECTION 1. Section 130.001, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 130.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Construction [~~"construction~~] contract" means a contract or agreement made and entered into by an owner, contractor, subcontractor, registered architect, licensed engineer, land surveyor, or supplier concerning the design, construction, alteration, repair, or maintenance of a building, structure, appurtenance, road, highway, bridge, dam, levee, or other improvement to or on real property, including moving, demolition, and excavation connected with the real property.

(2) "Land surveyor" means a registered professional land surveyor or licensed state land surveyor as those terms are defined by Section 1071.002, Occupations Code.

SECTION 2. Sections 130.002(a), (b), (c), (d), and (f), Civil Practice and Remedies Code, are amended to read as follows:

(a) A covenant or promise in, in connection with, or collateral to a construction contract is void and unenforceable if the covenant or promise provides for a contractor who is to perform the work that is the subject of the construction contract to

1 indemnify or hold harmless a registered architect, licensed  
2 engineer, or land surveyor, or an agent, servant, or employee of a  
3 registered architect, ~~or~~ licensed engineer, or land surveyor from  
4 liability for damage that:

5 (1) is caused by or results from:

6 (A) defects in plans, designs, or specifications  
7 prepared, approved, or used by the architect, ~~or~~ engineer, or  
8 land surveyor; or

9 (B) negligence of the architect, ~~or~~ engineer, or  
10 or land surveyor in the rendition or conduct of professional duties  
11 called for or arising out of the construction contract and the  
12 plans, designs, or specifications that are a part of the  
13 construction contract; and

14 (2) arises from:

15 (A) personal injury or death;

16 (B) property injury; or

17 (C) any other expense that arises from personal  
18 injury, death, or property injury.

19 (b) A covenant or promise in, in connection with, or  
20 collateral to a construction contract other than a contract for a  
21 single family or multifamily residence is void and unenforceable if  
22 the covenant or promise provides for a registered architect, ~~or~~  
23 licensed engineer, or land surveyor whose engineering, ~~or~~  
24 architectural, or land surveying design services are the subject of  
25 the construction contract to indemnify or hold harmless an owner or  
26 owner's agent or employee from liability for damage that is caused  
27 by or results from the negligence of an owner or an owner's agent or

1 employee.

2           (c) Except as provided by Subsection (d), (e), or (f), a  
3 covenant or promise in, in connection with, or collateral to a  
4 construction contract for engineering, ~~or~~ architectural, or land  
5 surveying services related to an improvement to real property is  
6 void and unenforceable to the extent the covenant or promise  
7 provides that a licensed engineer, ~~or~~ registered architect, or  
8 land surveyor must defend a party, including a third party, against  
9 a claim based wholly or partly on the negligence of, fault of, or  
10 breach of contract by the owner, the owner's agent, the owner's  
11 employee, or another entity over which the owner exercises  
12 control. A covenant or promise in, in connection with, or  
13 collateral to a contract for engineering, ~~or~~ architectural, or  
14 land surveying services related to an improvement to real property  
15 may provide for the reimbursement of an owner's reasonable  
16 attorney's fees in proportion to the engineer's, ~~or~~ architect's,  
17 or land surveyor's liability.

18           (d) Notwithstanding Subsection (c), an owner that is a party  
19 to a contract for engineering, ~~or~~ architectural, or land  
20 surveying services related to an improvement to real property may  
21 require in the contract that the engineer, ~~or~~ architect, or land  
22 surveyor name the owner as an additional insured under any of the  
23 engineer's, ~~or~~ architect's, or land surveyor's insurance coverage  
24 to the extent additional insureds are allowed under the policy and  
25 provide any defense to the owner provided by the policy to a named  
26 insured.

27           (f) Subsection (c) does not apply to a covenant to defend a

1 party, including a third party, for a claim of negligent hiring of  
2 the architect, ~~or~~ engineer, or land surveyor.

3 SECTION 3. The heading to Section 130.0021, Civil Practice  
4 and Remedies Code, is amended to read as follows:

5 Sec. 130.0021. ARCHITECT'S, ~~OR~~ ENGINEER'S, OR LAND  
6 SURVEYOR'S STANDARD OF CARE.

7 SECTION 4. Sections 130.0021(a) and (b), Civil Practice and  
8 Remedies Code, are amended to read as follows:

9 (a) A construction contract for architectural, ~~or~~  
10 engineering, or land surveying services or a contract related to  
11 the construction or repair of an improvement to real property that  
12 contains architectural, ~~or~~ engineering, or land surveying  
13 services as a component part must require that the architectural,  
14 ~~or~~ engineering, or land surveying services be performed with the  
15 professional skill and care ordinarily provided by competent  
16 architects, ~~or~~ engineers, or land surveyors practicing under the  
17 same or similar circumstances and professional license.

18 (b) If a contract described by Subsection (a) contains a  
19 provision establishing a different standard of care than the  
20 standard described by Subsection (a):

- 21 (1) the provision is void and unenforceable; and  
22 (2) the standard of care described by Subsection (a)  
23 applies to the performance of the architectural, ~~or~~ engineering,  
24 or land surveying services.

25 SECTION 5. Section 130.004(b), Civil Practice and Remedies  
26 Code, is amended to read as follows:

27 (b) Except as provided by Section 130.002(b) or (c) or

Section 130.0021, this chapter does not prohibit or make void or unenforceable a covenant or promise to:

(1) indemnify or hold harmless an owner of an interest in real property and persons employed solely by that owner; or

(2) allocate, release, liquidate, limit, or exclude liability in connection with a construction contract between an owner or other person for whom a construction contract is being performed and a registered architect, ~~or~~ licensed engineer, or land surveyor.

SECTION 6. Section 130.005, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 130.005. APPLICATION OF CHAPTER. This chapter does not apply to a contract or agreement in which an architect, ~~or~~ engineer, or land surveyor, or an agent, servant, or employee of an architect, ~~or~~ engineer, or land surveyor is indemnified from liability for:

(1) negligent acts other than those described by this chapter; or

(2) negligent acts of the contractor, any subcontractor, any person directly or indirectly employed by the contractor or a subcontractor, or any person for whose acts the contractor or a subcontractor may be liable.

SECTION 7. Section 271.904, Local Government Code, is amended to read as follows:

Sec. 271.904. ENGINEERING, ~~OR~~ ARCHITECTURAL, OR LAND SURVEYING SERVICES CONTRACTS: INDEMNIFICATION LIMITATIONS; DUTIES OF ENGINEER, ~~OR~~ ARCHITECT, OR LAND SURVEYOR. (a) A covenant or

1 promise in, in connection with, or collateral to a contract for  
2 engineering, ~~[or]~~ architectural, or land surveying services to  
3 which a governmental agency is a party is void and unenforceable if  
4 the covenant or promise provides that a licensed engineer, ~~[or]~~  
5 registered architect, or land surveyor whose work product is the  
6 subject of the contract must indemnify or hold harmless the  
7 governmental agency against liability for damage, other than  
8 liability for damage to the extent that the damage is caused by or  
9 results from an act of negligence, intentional tort, intellectual  
10 property infringement, or failure to pay a subcontractor or  
11 supplier committed by the indemnitor or the indemnitor's agent,  
12 consultant under contract, or another entity over which the  
13 indemnitor exercises control.

14 (b) Except as provided by Subsection (c), a covenant or  
15 promise in, in connection with, or collateral to a contract for  
16 engineering, ~~[or]~~ architectural, or land surveying services to  
17 which a governmental agency is a party is void and unenforceable if  
18 the covenant or promise provides that a licensed engineer, ~~[or]~~  
19 registered architect, or land surveyor whose work product is the  
20 subject of the contract must defend a party, including a third  
21 party, against a claim based wholly or partly on the negligence of,  
22 fault of, or breach of contract by the governmental agency, the  
23 agency's agent, the agency's employee, or other entity, excluding  
24 the engineer, ~~[or]~~ architect, or land surveyor or that person's  
25 agent, employee, or subconsultant, over which the governmental  
26 agency exercises control. A covenant or promise may provide for  
27 the reimbursement of a governmental agency's reasonable attorney's

1 fees in proportion to the engineer's, ~~or~~ architect's, or land  
2 surveyor's liability.

3 (c) Notwithstanding Subsection (b), a governmental agency  
4 may require in a contract for engineering, ~~or~~ architectural, or  
5 land surveying services to which the governmental agency is a party  
6 that the engineer, ~~or~~ architect, or land surveyor name the  
7 governmental agency as an additional insured under the engineer's,  
8 ~~or~~ architect's, or land surveyor's general liability insurance  
9 policy and provide any defense provided by the policy.

10 (d) A contract for engineering, ~~or~~ architectural, or land  
11 surveying services to which a governmental agency is a party must  
12 require a licensed engineer, ~~or~~ registered architect, or land  
13 surveyor to perform services:

14 (1) with the professional skill and care ordinarily  
15 provided by competent engineers, ~~or~~ architects, or land surveyors  
16 practicing under the same or similar circumstances and professional  
17 license; and

18 (2) as expeditiously as is prudent considering the  
19 ordinary professional skill and care of a competent engineer, ~~or~~  
20 architect, or land surveyor.

21 (e) In a contract for engineering, ~~or~~ architectural, or  
22 land surveying services to which a governmental agency is a party, a  
23 provision establishing a different standard of care than a standard  
24 described by Subsection (d) is void and unenforceable. If a  
25 contract contains a void and unenforceable provision, the standard  
26 of care described by Subsection (d) applies.

27 (f) In this section:

1           (1) "Governmental [~~," "governmental]~~ agency" has the  
2 meaning assigned by Section 271.003.

3           (2) "Land surveyor" means a registered professional  
4 land surveyor or licensed state land surveyor as those terms are  
5 defined by Section 1071.002, Occupations Code.

6           (g) Nothing in this section prohibits a governmental agency  
7 in a contract for engineering, ~~[or]~~ architectural, or land  
8 surveying services to which the governmental agency is a party from  
9 including and enforcing conditions that relate to the scope, fees,  
10 and schedule of a project in the contract.

11          SECTION 8. The change in law made by this Act applies only  
12 to a contract or covenant or promise in, in connection with, or  
13 collateral to a construction contract entered into on or after the  
14 effective date of this Act. A contract or covenant or promise in,  
15 in connection with, or collateral to a construction contract  
16 entered into before the effective date of this Act is governed by  
17 the law applicable to the contract or covenant or promise  
18 immediately before the effective date of this Act, and that law is  
19 continued in effect for that purpose.

20          SECTION 9. This Act takes effect September 1, 2025.