

BILL ANALYSIS

Senate Research Center

S.B. 1215
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 1907 Texas Supreme Court case, *Loneragan v. San Antonio Loan & Trust*, the court held that it was the responsibility of Loneragan, the builder, to reconstruct a collapsed building even though the collapse was due to a fatal defect in the design plans and specifications prepared by the architect of the owner and provided to Loneragan by the owner, San Antonio Loan & Trust. In the 2012 Texas Supreme Court case, *El Paso Field Services v. Mastec*, the court reaffirmed its decision in *Loneragan*.

In 1918, the United States Supreme Court ruled on a question similar to the Loneragan case in *United States v. Spearin* and came to a different conclusion, holding that it is not the builder's responsibility to determine the sufficiency of plans and specifications provided to it by the project owner. Since that ruling, 36 states and the District of Columbia follow the Spearin decision, not holding the builder liable for defective plans and specifications provided to it.

In Texas, while it seems reasonable for a builder to rely on plans, specifications, and other documents provided to the builder, if the work is defective due to an error in the plans and specifications, the builder bears the risk of liability for the defective work. This liability gets passed via contract to the subcontractors. Typical insurance does not cover this obligation and the possible loss may well exceed a company's net worth. Thus, a builder may not legally prepare design documents that a licensed professional is required to design; however, in accordance with the Loneragan doctrine, the builder impliedly warranties those documents.

S.B. 1215 provides that a builder is not responsible for the consequences of defects in, and is not required to warranty the accuracy, adequacy, sufficiency, or suitability of plans, specifications, or other design or bid documents provided to the builder by the person with whom the builder has entered into a construction contract. It also prevents an owner from requiring a builder to waive this protection by contract. (Original Author's / Sponsor's Statement of Intent)

S.B. 1215 amends current law relating to the creation of a joint interim committee to study issues related to 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. JOINT INTERIM COMMITTEE. (a) Provides that a joint interim committee is created to conduct a study under Section 2 of this Act.

(b) Provides that the joint interim committee is composed of members of the appropriate standing committees of the senate and the house of representatives as determined by the lieutenant governor and the speaker of the house of representatives.

(c) Requires the lieutenant governor and speaker of the house of representatives to each designate a co-chair from among the joint interim committee members, and the joint interim committee is required to convene at the joint call of the co-chairs.

(d) Provides that the joint interim committee has all other powers and duties provided to a special or select committee by the rules of the senate and house of representatives, by Subchapter B (Legislative Reorganization Act), Chapter 301 (Legislative Organization), Government Code, and by policies of the senate and house committees on administration.

SECTION 2. INTERIM STUDY. (a) Requires the joint interim committee to conduct a study on issues relating to construction contracts in this state to the extent the committee determines appropriate. Authorizes those issues to include certain issues.

(b) Requires the joint interim committee, not later than December 1, 2018, to issue a report on the study required under this section to the lieutenant governor, the speaker of the house of representatives, and the appropriate standing committees of the house of representatives and the senate.

SECTION 3. EXPIRATION. Provides that the joint interim committee created under Section 1 of this Act is abolished and this Act expires September 1, 2019.

SECTION 4. EFFECTIVE DATE. Effective date: upon passage or September 1, 2017.