

BILL ANALYSIS

Senate Research Center

S.B. 1215
By: Hughes
State Affairs
4/4/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the 1907 Texas Supreme Court case, *Lonergan v. San Antonio Loan & Trust*, the court held that it was the responsibility of Lonergan, 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 Lonergan 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 *Lonergan*.

In 1918, the U.S. Supreme Court ruled on a question similar to the Lonergan 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 Lonergan 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 be 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.

As proposed, S.B. 1215 amends current law relating to responsibility for the consequences of defects in the plans, specifications, or other documents for the construction or repair of an improvement to real property.

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. Amends Title 4, Business & Commerce Code, by adding Chapter 59, as follows:

CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

Sec. 59.001. DEFINITIONS. Defines "contract" and "contractor."

Sec. 59.002. CONTRACTOR NOT RESPONSIBLE FOR CERTAIN DEFECTS. Provides that a contractor is not responsible for the consequences of defects in, and may not warranty the accuracy, adequacy, sufficiency, or suitability of, plans, specifications,

or other design or bid documents provided to the contractor by the person with whom the contractor has entered into the contract or another person on behalf of the person with whom the contractor has entered into the contract.

Sec. 59.003. WAIVER OF CHAPTER PROHIBITED. Prohibits a person from waiving this chapter by any means. Provides that a purported waiver of this chapter is void.

SECTION 2. (a) Provides that the changes in law made by this Act do not apply to a contract that is entered into before the effective date of this Act. Provides that such a contract is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

(b) Provides that an original construction contract for the construction or repair of an improvement to real property with the owner of an interest in the real property that is entered into before the effective date of this Act, and any subcontract or purchase order for furnishing labor or materials associated with that original construction contract, regardless of whether the subcontract or purchase order is entered into before, on, or after the effective date of this Act, is governed by the law in effect when the original construction contract was entered into, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2017.