

## **BILL ANALYSIS**

Senate Research Center

H.B. 1999  
By: Leach et al. (Creighton)  
State Affairs  
5/10/2019  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties contend that design professionals and construction contractors involved in public, commercial building projects are being sued for alleged construction defects before they are made aware of any alleged defects and before the alleged defects are identified during inspection.

H.B. 1999 seeks to remedy this situation by requiring an inspection of the affected improvement, and for a period during which the potentially liable parties may correct any alleged defects, before a suit may be filed.

H.B. 1999 does not prevent a public owner from filing a construction defect suit, nor does it prevent an owner from hiring someone else to fix the alleged defect. It only requires that the original parties, who had a hand in the design and construction of the building project be given the opportunity for an inspection and a chance to address the defect prior to suit being filed.

H.B. 1999 amends current law relating to certain construction liability claims concerning public buildings and public works.

### **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 Subtitle F, Title 10, Government Code, by adding Chapter 2272, as follows:

#### **CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS**

Sec. 2272.001. DEFINITIONS. Defines "action," "construction," "construction defect," "contractor," "design professional," "governmental entity," "subcontractor," and "supplier" for purposes of this chapter.

Sec. 2272.002. APPLICABILITY OF CHAPTER. (a) Provides that this chapter applies only to a claim:

(1) for:

(A) damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work; or

(B) indemnity or contribution for damages described by Paragraph (A);

(2) asserted by a governmental entity with an interest in the public building or public work affected by the alleged construction defect; and

(3) asserted against a contractor, subcontractor, supplier, or design professional.

(b) Provides that this chapter does not apply to:

(1) a claim for personal injury, survival, or wrongful death;

(2) a claim involving the construction of residential property covered under Chapter 27 (Residential Construction Liability), Property Code;

(3) a contract entered into by the Texas Department of Transportation;

(4) a project that receives money from a state or federal highway fund; or

(5) a civil works project as defined by Section 2269.351 (Definitions), Government Code.

Sec. 2272.003. REPORT. Requires the governmental entity, before bringing an action asserting a claim to which this chapter applies, to provide each party with whom the governmental entity has a contract for the design or construction of an affected structure a written report by certified mail, return receipt requested, that clearly:

(1) identifies the specific construction defect on which the claim is based;

(2) describes the present physical condition of the affected structure; and

(3) describes any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a) Requires the governmental entity, before bringing an action asserting a claim to which this chapter applies, to allow each party with whom the governmental entity has a contract for the design or construction of an affected structure and who is subject to the claim and any known subcontractor or supplier who is subject to the claim:

(1) a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after sending the report required by Section 2272.003; and

(2) at least 120 days after the inspection to:

(A) correct any construction defect or related condition identified in the report; or

(B) enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

(b) Provides that the governmental entity is not required to allow a party to make a correction or repair under Subsection (a) if:

(1) the party:

(A) is a contractor and cannot provide payment and performance bonds to cover the corrective work;

(B) cannot provide liability insurance or workers' compensation insurance;

(C) has been previously terminated for cause by the governmental entity; or

(D) has been convicted of a felony; or

(2) the governmental entity previously complied with the process required by Subsection (a) regarding a construction defect or related condition identified in the report and:

(A) the defect or condition was not corrected as required by Subsection (a)(2)(A) or an agreement under Subsection (a)(2)(B); or

(B) the attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

Sec. 2272.005. **TOLLING OF LIMITATIONS AND REPOSE PERIODS.** Provides that, if the report and opportunity to correct required by Sections 2272.003 and 2272.004 are provided during the final year of a limitations or repose period applicable to the claim, the limitations or repose period is tolled until the first anniversary of the date on which the report is provided.

Sec. 2272.006. **DISMISSAL.** (a) Requires the court, arbitrator, or other adjudicating authority, if a governmental entity brings an action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, to dismiss the action without prejudice.

(b) Requires the court, arbitrator, or other adjudicating authority, if an action is dismissed without prejudice under Subsection (a) and the governmental entity brings a second action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, to dismiss the action with prejudice.

Sec. 2272.007. **RECOVERY OF REPORT COSTS.** Requires the party responsible for that construction defect, if a report provided by a governmental entity under Section 2272.003 identifies a construction defect that is corrected under Section 2272.004 or for which the governmental entity recovers damages, to pay the reasonable amounts incurred by the governmental entity to obtain the report with respect to identification of that construction defect.

Sec. 2272.008. **EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY.** Provides that this chapter does not prohibit or limit a governmental entity from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

Sec. 2272.009. **INSURANCE TREATMENT OF CLAIM.** Requires the insurer, if a party, in connection with a potential claim against the party, receives a written notice of an alleged construction defect or a report under Section 2272.003 identifying a construction defect and provides the notice or report to the party's insurer, to treat the provision of the notice or report to the party as the filing of a suit asserting that claim against the party for purposes of the relevant policy terms.

SECTION 2. (a) Makes application of Chapter 2272, Government Code as added by this Act, prospective.

(b) Makes application of Section 2272.009, Government Code, as added by this Act, prospective to January 1, 2020.

SECTION 3. Effective date: upon passage or September 1, 2019.