

## **BILL ANALYSIS**

Senate Research Center  
87R16277 AJA-F

C.S.S.B. 219  
By: Hughes  
State Affairs  
3/22/2021  
Committee Report (Substituted)

### **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 the builder by someone else.

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 plans.

S.B. 219 provides that a builder is not responsible for the consequences of defects in 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)

C.S.S.B. 219 amends current law relating to civil liability and responsibility for the consequences of defects in the plans, specifications, or related 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

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.0001. DEFINITIONS. Defines "construction," "contractor," "critical infrastructure facility," "design-build contract," and "subcontractor."

##### SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

Sec. 59.0051. APPLICABILITY OF SUBCHAPTER. (a) Provides that Subchapter B applies only to a contract for the construction or repair of an improvement to real property.

(b) Provides that Subchapter B does not apply to a contract entered into by a person for the construction or repair of a critical infrastructure facility owned or operated by the person or any building, structure, improvement, appurtenance, or other facility owned by the person that is necessary to the operation of and directly related to the critical infrastructure facility. Provides that, for purposes of this subsection, "person" includes a parent, subsidiary, affiliated entity, joint venture partner, or owner of the person.

(c) Provides that Chapter 59 does not apply to the construction, repair, alteration, or remodeling of an improvement to real property if:

(1) the construction, repair, alteration, or remodeling is performed under a design-build contract; and

(2) the part of the plans, specifications, or other design or bid documents for which the contractor is responsible under the contract is the part alleged to be defective.

Sec. 59.0052. LIMITATION ON CONTRACTOR'S LIABILITY AND RESPONSIBILITY FOR CERTAIN DEFECTS. (a) 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, or another person on behalf of the person, with whom the contractor entered into the contract.

(b) Requires a contractor, within a reasonable time of learning of the defect, to disclose in writing to the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications, or other design or bid documents that is discovered by the contractor, or that reasonably should have been discovered by the contractor using ordinary diligence, before or during construction.

(c) Provides that a contractor who fails to disclose a condition as required by Subsection (b) may be liable for the consequences of defects that result from the failure to disclose.

Sec. 59.0053. STANDARD OF CARE FOR CERTAIN DESIGNS. Provides that design services provided under a design-build contract are subject to the same standard of care requirements provided in Section 130.0021, Civil Practice and Remedies Code.

Sec. 59.0054. WAIVER PROHIBITED. Prohibits Subchapter B from being waived by a contractor, subcontractor, or owner. Provides that a purported waiver of Subchapter B in violation of this section is void.

SECTION 2. Amends the heading to Chapter 130, Civil Practice and Remedies Code, to read as follows:

#### CHAPTER 130. LIABILITY PROVISIONS IN CERTAIN CONSTRUCTION CONTRACTS

SECTION 3. Amends Chapter 130, Civil Practice and Remedies Code, by adding Section 130.0021, as follows:

Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE. (a) Requires that a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part require that the architectural or engineering

services be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

(b) Provides that if a contract described by Subsection (a) contains a provision establishing a different standard of care than the standard described by Subsection (a):

(1) the provision is void and unenforceable; and

(2) the standard of care described by Subsection (a) applies to the performance of the architectural or engineering services.

(c) Provides that Section 130.004 does not limit the applicability of this section.

SECTION 4. Amends Section 130.004, Civil Practice and Remedies Code, as follows:

Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a) Provides that, except as provided by Section 130.002(b) (relating to certain contracts for a single family or multifamily residence being void and unenforceable under certain conditions including damage caused by negligence) or 130.0021, rather than by Section 130.002(b) only, Chapter 130 does not apply to an owner of an interest in real property or persons employed solely by that owner.

(b) Provides that, except as provided by Section 130.002(b) or 130.0021, rather than by Section 130.002(b) only, Chapter 130 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.

SECTION 5. (a) Makes application of this Act prospective.

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

SECTION 6. Effective date: September 1, 2021.