

1-1 By: Hughes S.B. No. 219
 1-2 (In the Senate - Filed November 30, 2020; March 3, 2021,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 March 24, 2021, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 1; March 24, 2021,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14			X	
1-15		X		
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 219 By: Hughes

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to civil liability and responsibility for the consequences
 1-22 of defects in the plans, specifications, or related documents for
 1-23 the construction or repair of an improvement to real property.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Title 4, Business & Commerce Code, is amended by
 1-26 adding Chapter 59 to read as follows:

1-27 CHAPTER 59. RESPONSIBILITY FOR DEFECTS IN PLANS AND SPECIFICATIONS

1-28 SUBCHAPTER A. GENERAL PROVISIONS

1-29 Sec. 59.0001. DEFINITIONS. In this chapter:

1-30 (1) "Construction" includes:

1-31 (A) the initial construction of an improvement to
 1-32 real property;

1-33 (B) the construction of an addition to an
 1-34 improvement to real property; or

1-35 (C) the repair, alteration, or remodeling of an
 1-36 improvement to real property.

1-37 (2) "Contractor" means a person engaged in the
 1-38 business of developing, constructing, fabricating, repairing,
 1-39 altering, or remodeling improvements to real property.

1-40 (3) "Critical infrastructure facility" has the
 1-41 meaning assigned by Section 423.0045, Government Code, provided
 1-42 that the absence of fencing or signage described in the definition
 1-43 provided by that section does not disqualify an item listed in that
 1-44 definition from being classified or treated as a critical
 1-45 infrastructure facility for purposes of this chapter. The term
 1-46 includes:

1-47 (A) pipelines and pipeline appurtenances or
 1-48 facilities, including pipes, valves, meters, pumps, compressors,
 1-49 treating and processing facilities, cathodic protection
 1-50 facilities, and any other equipment, facilities, devices,
 1-51 structures, and buildings used or intended for use in the
 1-52 gathering, transportation, treating, or processing of oil, gas, or
 1-53 other minerals, and the liquefied or gaseous substances,
 1-54 constituents, products, or mixtures derived from those minerals
 1-55 through refining, processing, or other methods;

1-56 (B) utility-scale equipment or facilities to
 1-57 transmit or distribute electricity; and

1-58 (C) utility-scale water storage facilities.

1-59 (4) "Design-build contract" means a contract in which
 1-60 a single contractor agrees to:

2-1 (A) construct, repair, alter, or remodel an
2-2 improvement to real property; and

2-3 (B) be responsible for the development of plans,
2-4 specifications, or other design or bid documents used by the
2-5 contractor to construct, repair, alter, or remodel the improvement.

2-6 (5) "Subcontractor" means a contractor directly
2-7 retained and compensated by another contractor to perform labor or
2-8 perform labor and supply materials in the construction.

2-9 SUBCHAPTER B. CONTRACTOR RESPONSIBILITY

2-10 Sec. 59.0051. APPLICABILITY OF SUBCHAPTER. (a) This
2-11 subchapter applies only to a contract for the construction or
2-12 repair of an improvement to real property.

2-13 (b) This subchapter does not apply to a contract entered
2-14 into by a person for the construction or repair of a critical
2-15 infrastructure facility owned or operated by the person or any
2-16 building, structure, improvement, appurtenance, or other facility
2-17 owned by the person that is necessary to the operation of and
2-18 directly related to the critical infrastructure facility. For
2-19 purposes of this subsection, "person" includes a parent,
2-20 subsidiary, affiliated entity, joint venture partner, or owner of
2-21 the person.

2-22 (c) This chapter does not apply to the construction, repair,
2-23 alteration, or remodeling of an improvement to real property if:

2-24 (1) the construction, repair, alteration, or
2-25 remodeling is performed under a design-build contract; and

2-26 (2) the part of the plans, specifications, or other
2-27 design or bid documents for which the contractor is responsible
2-28 under the contract is the part alleged to be defective.

2-29 Sec. 59.0052. LIMITATION ON CONTRACTOR'S LIABILITY AND
2-30 RESPONSIBILITY FOR CERTAIN DEFECTS. (a) A contractor is not
2-31 responsible for the consequences of defects in and may not warranty
2-32 the accuracy, adequacy, sufficiency, or suitability of plans,
2-33 specifications, or other design or bid documents provided to the
2-34 contractor by:

2-35 (1) the person with whom the contractor entered into
2-36 the contract; or

2-37 (2) another person on behalf of the person with whom
2-38 the contractor entered into the contract.

2-39 (b) A contractor must, within a reasonable time of learning
2-40 of the defect, disclose in writing to the person with whom the
2-41 contractor enters into a contract the existence of any known defect
2-42 in the plans, specifications, or other design or bid documents that
2-43 is discovered by the contractor, or that reasonably should have
2-44 been discovered by the contractor using ordinary diligence, before
2-45 or during construction.

2-46 (c) A contractor who fails to disclose a condition as
2-47 required by Subsection (b) may be liable for the consequences of
2-48 defects that result from the failure to disclose.

2-49 Sec. 59.0053. STANDARD OF CARE FOR CERTAIN DESIGNS. Design
2-50 services provided under a design-build contract are subject to the
2-51 same standard of care requirements provided in Section 130.0021,
2-52 Civil Practice and Remedies Code.

2-53 Sec. 59.0054. WAIVER PROHIBITED. This subchapter may not
2-54 be waived by a contractor, subcontractor, or owner. A purported
2-55 waiver of this subchapter in violation of this section is void.

2-56 SECTION 2. The heading to Chapter 130, Civil Practice and
2-57 Remedies Code, is amended to read as follows:

2-58 CHAPTER 130. LIABILITY PROVISIONS [~~INDEMNIFICATION~~] IN CERTAIN
2-59 CONSTRUCTION CONTRACTS

2-60 SECTION 3. Chapter 130, Civil Practice and Remedies Code,
2-61 is amended by adding Section 130.0021 to read as follows:

2-62 Sec. 130.0021. ARCHITECT'S OR ENGINEER'S STANDARD OF CARE.

2-63 (a) A construction contract for architectural or engineering
2-64 services or a contract related to the construction or repair of an
2-65 improvement to real property that contains architectural or
2-66 engineering services as a component part must require that the
2-67 architectural or engineering services be performed with the
2-68 professional skill and care ordinarily provided by competent
2-69 architects or engineers practicing under the same or similar

3-1 circumstances and professional license.
3-2 (b) If a contract described by Subsection (a) contains a
3-3 provision establishing a different standard of care than the
3-4 standard described by Subsection (a):
3-5 (1) the provision is void and unenforceable; and
3-6 (2) the standard of care described by Subsection (a)
3-7 applies to the performance of the architectural or engineering
3-8 services.
3-9 (c) Section 130.004 does not limit the applicability of this
3-10 section.
3-11 SECTION 4. Section 130.004, Civil Practice and Remedies
3-12 Code, is amended to read as follows:
3-13 Sec. 130.004. OWNER OF INTEREST IN REAL PROPERTY. (a)
3-14 Except as provided by Section 130.002(b) or 130.0021, this chapter
3-15 does not apply to an owner of an interest in real property or
3-16 persons employed solely by that owner.
3-17 (b) Except as provided by Section 130.002(b) or 130.0021,
3-18 this chapter does not prohibit or make void or unenforceable a
3-19 covenant or promise to:
3-20 (1) indemnify or hold harmless an owner of an interest
3-21 in real property and persons employed solely by that owner; or
3-22 (2) allocate, release, liquidate, limit, or exclude
3-23 liability in connection with a construction contract between an
3-24 owner or other person for whom a construction contract is being
3-25 performed and a registered architect or licensed engineer.
3-26 SECTION 5. (a) The changes in law made by this Act apply
3-27 only to a contract entered into on or after the effective date of
3-28 this Act. A contract entered into before the effective date of this
3-29 Act is governed by the law in effect when the contract was entered
3-30 into, and the former law is continued in effect for that purpose.
3-31 (b) An original contract for the construction or repair of
3-32 an improvement to real property with the owner of an interest in
3-33 real property that is entered into before the effective date of this
3-34 Act, and a subcontract or purchase order for providing labor or
3-35 materials associated with that original contract, whether the
3-36 subcontract or purchase order is entered into before, on, or after
3-37 the effective date of this Act, is governed by the law in effect
3-38 when the original contract was entered into, and the former law is
3-39 continued in effect for that purpose.
3-40 SECTION 6. This Act takes effect September 1, 2021.

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