

BILL ANALYSIS

Senate Research Center
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H.B. 1211
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1211 amends the Civil Practice and Remedies Code to establish that a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party. The bill authorizes a covenant or promise in, in connection with, or collateral to such a contract to provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability. The bill makes these provisions inapplicable to a contract for design-build services in which an owner contracts with a single entity to provide both design and construction services.

H.B. 1211 authorizes an owner that is a party to such a contract to require in the contract that the engineer or architect name the owner as an additional insured under the engineer's or architect's commercial general liability insurance policy and provide any defense to the owner provided by the policy to a named insured.

H.B. 1211 prohibits such a contract from requiring a licensed engineer or registered architect to perform professional services to a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances.

H.B. 1211 amends current law relating to certain agreements by architects and engineers in or in connection with certain 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. Amends the heading to Chapter 130, Civil Practice and Remedies Code, to read as follows:

CHAPTER 130. LIABILITY PROVISIONS IN CERTAIN CONSTRUCTION CONTRACTS

SECTION 2. Amends Section 130.002, Civil Practice and Remedies Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that, except as provided by Subsection (d), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect must defend a party, including a third party. Authorizes a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services related to an improvement to real property to provide for the reimbursement of an owner's reasonable attorney's fees in proportion to the engineer's or architect's liability.

(d) Authorizes an owner that is a party to a contract for engineering or architectural services related to an improvement to real property, notwithstanding Subsection (c), to require in the contract that the engineer or architect name the owner as an additional insured under the engineer's or architect's commercial general liability insurance policy and provide any defense to the owner provided by the policy to a named insured.

(e) Provides that Subsection (c) does not apply to a contract for design-build services in which an owner contracts with a single entity to provide both design and construction services.

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

Sec. 130.0021. ENGINEER'S OR ARCHITECT'S STANDARD OF CARE. Prohibits a contract for engineering or architectural services related to an improvement to real property from requiring a licensed engineer or registered architect to perform professional services to a level of professional skill and care beyond that which would be provided by an ordinarily prudent engineer or architect with the same professional license under the same or similar circumstances.

SECTION 4. (a) Makes application of Section 130.002(c), Civil Practice and Remedies Code, as added by this Act, prospective.

(b) Makes application of Sections 130.002(d) and 130.0021, Civil Practice and Remedies Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2019.