

BILL ANALYSIS

C.S.H.B. 1211
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that certain nongovernmental contracts for engineering or architectural services can require an engineer or architect to defend against another's negligence. C.S.H.B. 1211 seeks to remedy this situation by revising the law regarding liability provisions in certain construction contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.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.

C.S.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.

C.S.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.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1211 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions relating to a void and unenforceable covenant or promise in, in connection with, or collateral to a construction contract, other than a contract for a single family or multifamily residence, for the design services of a registered architect or licensed engineer and to the liability of the architect or engineer for damage caused by or resulting from the negligence of another person, but includes provisions relating to the enforceability of a covenant or promise regarding a contract for engineering or architectural services related to an improvement to real property, including a third party. The substitute includes a provision authorizing such a covenant or promise to provide for the reimbursement of an owner's attorney's fees in proportion to the engineer's or architect's liability. The substitute includes a provision making these provisions inapplicable to design-build contracts.

The substitute includes a provision authorizing an owner that is a party to the contract to require 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.

The substitute does not include a requirement for a contract for engineering or architectural services to require a licensed engineer or registered architect to perform services with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license, but includes a prohibition against such a contract requiring an engineer or architect to perform services with a level of skill and care beyond that which would be ordinarily provided by an engineer or architect with the same professional license under the same or similar circumstances.