

## **BILL ANALYSIS**

Senate Research Center

S.B. 807  
By: Creighton  
State Affairs  
6/7/2017  
Enrolled

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

The Texas Business & Commerce Code has long provided protection for general contractors and subcontractors who contract with entities from other states. Section 272.001 et seq. gives the contractor or subcontractor the ability to void a clause requiring disputes be decided under the law of another state, or for the dispute to be heard in another state, if the project is located in Texas. The basic rule is that projects constructed in Texas will be decided in Texas, under Texas law. However, the statute only applies to contracts "principally for the construction or repair of an improvement to real property in this state," which means providing labor or materials "as a general contractor or subcontractor." Section 272.002(a) makes clear that the statute does not apply to design professionals.

With the increasing number of out-of-state companies moving to Texas, architect and engineers and other project participants are required to sign contracts that state that disputes will be decided under the laws of another state, and that any trial or arbitration will be held out of state.

The protections offered by Section 272.001, Business & Commerce Code, are limited to "general contractors or subcontractors." Architects, engineers, suppliers, and equipment rental companies are unable to rely on this statute to require their disputes be resolved in Texas, and often do not have the bargaining power to convince the owner or other parties to change the terms of the contract. S.B. 807 simply broadens the definition to include all project participants, including architects, engineers, suppliers, and equipment rental companies.

S.B. 807 amends current law relating to choice of law and venue for 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 272, Business & Commerce Code, to read as follows:

#### **CHAPTER 272. LAW APPLICABLE TO CERTAIN CONSTRUCTION CONTRACTS**

SECTION 2. Amends Chapter 272, Business & Commerce Code, by adding Section 272.0001 and amending Sections 272.001 and 272.002, as follows:

Sec. 272.0001. DEFINITION. Defines "construction contract."

Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) Provides that this section applies only to a construction contract concerning real property located in this state, rather than applies only to a contract that is principally for the construction or repair of an improvement to real property located in this state.

(b) Provides that, if a construction contract or an agreement collateral to or affecting the construction contract contains a provision making the contract or agreement or any conflict arising under the contract or agreement subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by a party, rather than the party, obligated by the contract or agreement to perform the work that is the subject of the construction contract, rather than perform the construction or repair.

Sec. 272.002. New heading: INAPPLICABILITY OF CHAPTER. Deletes existing Subsection (a) relating to describing when a contract is principally for the construction or repair of an improvement to real property located in this state. Provides that this chapter does not apply to a construction contract that:

(1) makes no changes to this subdivision;

(2) provides for a loan or other extension of credit and the party promising to perform the work that is the subject of the construction contract, rather than the party promising to construct or repair the improvement, is doing so as part of the party's agreements with the lender or other person who extends credit; or

(3) is for the management of real property or improvements and the obligation to perform the work that is the subject of the construction contract, rather than the obligation to construct or repair the improvement, is part of that management.

(b) Deletes existing text of Subsection (b) providing that a contract is not principally for the construction or repair of an improvement to real property located in this state under certain circumstances.

Deletes existing Subsection (c), providing that Subsections (a) and (b) do not provide an exclusive list of the situations in which a contract is or is not principally for the construction or repair of an improvement to real property located in this state.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.