



AGC-Texas Building Branch

Legislative Position Paper

Contractors not liable for design defects

SB 219 by Chairman Hughes in Senate State Affairs
HB 1418 by Chairman Leach in House Judiciary & Civil Jurisprudence

****most important AGC-TBB bill of the 2021 session****

AGC Supports

Background

In 48 states, contractors are responsible for construction defects and architects/engineers are responsible for design defects.

In Texas, contractors are responsible for both construction defects AND architecture/engineer design defects—despite the fact that contractors do not have the architect/engineering license required by Texas law to do design work, do not have a contract with the architect/engineer, do not select the architect/engineer, and cannot sue for the architect/engineer's design defects.

Proposed legislation

This bill would make contractors no longer liable for architectural/engineering design defects unless the contractor knew about them and failed to disclose them. Contractors would remain liable for construction defects. Significantly, the bill also exempts critical infrastructure from the bill.

In 2019 the House passed a similar bill by Chairman Jeff Leach/Senator Chuy Hinojosa (HB 2899) for design defects on road and highway projects by a vote of 118-29, and the Senate passed it 31-0.

Supported by:

AGC-Texas Building Branch • Associated Builders and Contractors of Texas • Texas Construction Association

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AGC-Texas Building Branch

Legislative Position Paper

Shortening the Statute of Repose

HB 3069 by Rep. Holland in House Judiciary & Civil Jurisprudence

AGC Supports

Background

In Texas, building owners have 12 years to sue architects, engineers, and contractors for defects. This is known as the “statute of repose.” The alleged defects must be found within 10 years of the building’s completion, and building owners get an additional 2 years to sue for defects discovered in the 10th year.

This is too long to allow such lawsuits, because several factors affect whether the claim is factual or just a play for insurance money (e.g., how well the building owner has maintained its building).

Twenty-two US states allow only 4-8 years to sue for such defects. Two of Texas’ neighbors – Louisiana and Arkansas – allow 5 years to sue, not 12.

Proposed legislation

This bill would shorten the time building owners can sue for defects from 10 years to 5 years for public projects. Building owners would have an additional year (instead of 2 years) to sue for defects discovered in the 5th year.

Supported by:

- Texas Society of Architects
- AGC-Texas Building Branch
- American Council of Engineering Companies of Texas
- Associated Builders and Contractors of Texas
- Texas Construction Association

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Legislative Position Paper

Creating uniform general conditions (UGCs) for ISD building contracts

SB 338 by Senator Powell in Senate Education
HB 965 by Representative Lucio III in House Public Education

AGC Supports

Background

Building construction contracts contain (1) **general** conditions (common across all projects) and (2) **special** conditions (unique to that particular project).

For **general** conditions, State building construction contracts use uniform general conditions (UGCs), which are collaboratively developed every five years by a statutory workgroup and then adopted by the Texas Facilities Commission. [Govt Code Ch. 2166, Subchapter G]. The statutory workgroup represents a variety of interests: engineers, architects, general contractors, subcontractors, state agencies, higher ed, HUBs, the AG's office, etc. The most recent set of UGCs was created in 2020, and TFC's adoption of them is pending.

Proposed legislation

This bill would take advantage of this collaborative and experienced UGCs process by adding two positions to the UGCs statutory workgroup: one for the Texas Assn of School Boards (TASB) and another for the Texas Assn of School Administrators (TASA). In turn the bill would explicitly authorize, permissively, UGCs adoption by ISDs into building construction contracts.

This bill is identical to 2019's CSSB 1297, which passed Senate Ed 11-0, the full Senate 31-0, and House Public Ed 11-0 late in the session. CSSB 1297 was in House Calendars when session ended.

Supported by:

Texas Society of Architects • AGC-Texas Building Branch • American Council of Engineering Companies of Texas • Associated Builders and Contractors of Texas • Texas Construction Association • Texas Surety Foundation

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