

Senate Bill 219

August 19, 2021

**BUILDING FUTURES,
MAINTAINING EXCELLENCE**

SB 219 What is it?

- Changes the legal doctrine upon which contractors warrant owner-furnished plans and specifications
- *Currently Texas uses Lonergan Doctrine*
 - *Only state that used this doctrine*
 - *In it's purest form the Lonergan doctrine prevents a contractor from successfully asserting a claim for breach of contract based upon defective plans and specs unless the contract allows it*
 - *Contractor warrants the sufficiency and accuracy of owner furnished plans and specs*
 - *Shifts the burden of risk to the contractor*

SB 219 What is it?

- *Texas will be heavily limiting Lonergan*
 - *Spearin Doctrine in many ways, 49 states currently use this doctrine*
 - *Owner warrants the sufficiency and accuracy of owner furnished plans and specs*
 - *Shields contractors from claims based on liability for design defects*
 - *Shifts the burden of risk to the owner*
 - *Mitigation through Errors and Omissions insurance that AEs carry*
 - *Requires contractors to disclose any known defects they discover through “ordinary diligence”*
 - *“Critical infrastructure projects” excluded*
 - *Airports, refineries, etc.*

SB 219 Summary

- Effective 9/1/2021 and applies to contracts executed after that date. Before this date are governed by existing law.
- Contractors already trying to “insert language” into agreements
- Will fundamentally change the basis upon which we address plans and specification issues
- Mitigation language discussions with OGC
- CMAR mitigates risk, Design build removes it