

## **BILL ANALYSIS**

Senate Research Center

S.B. 1017  
By: Wentworth  
Jurisprudence  
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Enrolled

### **DIGEST AND PURPOSE**

In May 2002, the Texas Supreme Court held that Section 89.004, Local Government Code, does not clearly and unambiguously waive immunity from suit for claims against counties. S.B. 1017 prohibits a person from filing suit against a county or certain county officials unless the person follows certain procedures. This bill also amends Subchapter A, Chapter 262, Local Government Code, to clearly state that a county may sue or be sued.

### **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 Section 89.004, Local Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits a person from filing suit on a claim against a county or an elected or appointed county official in the official's capacity as an appointed or elected official unless the person has presented the claim to the commissioners court and the commissioners court neglects or refuses to pay all or part of the claim before the 60th day after the date of the presentation of the claim, except as provided by Subsection (c).

(c) Authorizes a person to file a suit for injunctive relief against a county. Requires any portion of the suit that seeks monetary damages to be abated until the claim is presented to the commissioners court and the commissioners court neglects or refuses to pay all or part of the claim by the 60th day after the date of the presentation of the claim, after the court's ruling on the application for temporary injunctive relief.

SECTION 2. Amends Subchapter A, Chapter 262, Local Government Code, by adding Section 262.007, as follows:

Sec. 262.007. SUIT AGAINST COUNTY ARISING UNDER CERTAIN CONTRACTS. (a) Authorizes a county that is a party to a written contract for engineering, architectural, or construction services or for goods related to engineering, architectural, or construction services to sue or be sued, plead or be impleaded, or defend or be defended in any court on a claim arising under the contract. Requires a suit on a contract brought by a county to be brought in the name of the county, and a suit on a contract brought against a county to identify the county by name and to be brought in a state court in that county.

(b) Provides that the total amount of money recoverable from a county on a claim for breach of the contract is limited to the following:

(1) the balance due and owed by the county under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;

- (2) the amount owed for change orders or additional work required to carry out the contract;
- (3) reasonable and necessary attorney's fees that are equitable and just; and
- (4) interest as allowed by law.

(c) Prohibits an award of damages under this section from including:

- (1) consequential damages, except as allowed under Subsection (b)(1);
- (2) exemplary damages; or
- (3) damages for unabsorbed home office overhead.

(d) Provides that this section does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.

(e) Provides that this section does not waive sovereign immunity to suit in federal court.

SECTION 3. Amends Chapter 89, Local Government Code, by adding Section 89.0041, as follows:

Sec. 89.0041. NOTICE OF SUIT AGAINST COUNTY. (a) Requires a person filing suit against a county or against a county official in the official's capacity as a county official to deliver written notice to:

- (1) the county judge; and
- (2) the county or district attorney having jurisdiction to defend the county in a civil suit.

(b) Requires the written notice to be delivered by certified or registered mail by the 30th business day after suit is filed and contain:

- (1) the style and cause number of the suit;
- (2) the court in which the suit was filed; and
- (3) the date on which the suit was filed.

(c) Requires the court in which the suit is pending to dismiss the suit on a motion for dismissal made by the county or the county official, if a person does not give notice as required by this section.

SECTION 4. Effective date: September 1, 2003.  
Makes application of this Act prospective.