

## **BILL ANALYSIS**

C.S.S.B. 1017  
By: Wentworth  
Civil Practices  
Committee Report (Substituted)

### **BACKGROUND 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.

C.S.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**

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**

CSSB 1017 amends Section 89.004(a), Local Government Code, to prohibit 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. It amends Subchapter A, Chapter 262, Local Government Code, by adding Section 262.007, which authorizes a county that is a party to a written contract to sue or be sued, plead or be impleaded, or defend or be defended 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. The total amount of money recoverable may not exceed an amount equal to the sum of the balance due and owed by the county under the contract, the reasonable value of change orders, and reasonable attorney's fees. An award of damages under this section may not include consequential or exemplary damages. Clarifies that this section does not waive a defense to a party to a contract, other than a bar against suit based on sovereign immunity.

### **EFFECTIVE DATE**

September 1, 2003

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSSB 1017 differs from the engrossed version by limiting the total amount of money recoverable from a county to an amount equal to the sum of the balance due and owed by the county, the reasonable value of change orders, and reasonable attorney's fees. It also adds that an award of damages under this section may not include consequential or exemplary damages. The substitute narrows the applicability to written contracts for the sales of goods or for engineering or construction services.