

BILL ANALYSIS

C.S.H.C.R. 138
By: Strama
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

This resolution grants WB IND-HP, Ltd. permission to sue the State of Texas subject to Chapter 107, Civil Practices and Remedies Code, arising from the breach of the lease dated August 8, 2002 between WB IND-HP, Ltd. and the Texas Building and Procurement Commission and the Texas Department of Public Safety on behalf of the Texas Commission on Private Security ("Lease"). WB IND-HP, Ltd. has exhausted all applicable administrative remedies and seeks to sue the State of Texas and thereby pursue its claim in court.

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

WHEREAS, WB IND-HP, Ltd., alleges that:

- (1) on or about August 8, 2002, the Texas Building and Procurement Commission entered into a leasing contract with WB IND-HP, Ltd., for 44,456 square feet of net usable office space located at 4616 West Howard Lane in Austin, Texas;
- (2) 10,850 square feet of that office space was leased by the Texas Building and Procurement Commission on behalf of the Texas Commission on Private Security;
- (3) the term of the lease was 60 months and contractually scheduled to end on October 31, 2007;
- (4) at or shortly after the commencement of the lease, the Texas Commission on Private Security took occupancy of the building;
- (5) the Texas Commission on Private Security ceased to use the space for conducting the affairs of the Texas Commission on Private Security on August 31, 2003;
- (6) the Texas Building and Procurement Commission, through the Texas Commission on Private Security, ceased making lease payments after August 2003;
- (7) the Texas Building and Procurement Commission did not send any notice to attempt to cancel the lease until April 29, 2004;
- (8) the Texas Building and Procurement Commission admits that WB IND-HP, Ltd., was a responsive landlord and fully performed on all of its duties to the Texas Commission on Private Security;
- (9) the Texas Commission on Private Security and its successor, the Texas Department of Public Safety, continued to occupy the space by leaving furniture and office equipment in the space until May 2005;
- (10) the lease between WB IND-HP, Ltd., and the Texas Building and Procurement Commission states that the contract "is made contingent upon the continuation of federally funded programs, or upon the availability of state funds appropriated by the Legislature, to cover the full term and cost of this lease. In the event a curtailment of federally funded programs occurs, or in the event state appropriated funds are unavailable, the Building and Procurement Commission, hereinafter referred to as the Commission, may assign another State agency to the space, or a part thereof, covered by this lease. Should the Commission be unable

to find another State agency or agencies to fill, or partially fill the space, the Commission, upon written notice to the Lessor, either may terminate this lease, or adjust it in accordance with the provisions of this lease";

(11) the Texas Building and Procurement Commission has not shown that state funds have not been appropriated to the Texas Commission on Private Security or its successor, the Texas Department of Public Safety;

(12) the Texas Building and Procurement Commission has been unable to find another state agency or agencies to take over the Texas Commission on Private Security lease;

(13) by assuming the responsibilities of the Texas Commission on Private Security under House Bill 28 (enacted by the 78th Legislature, 3rd Called Session, 2003), the Texas Department of Public Safety is still in possession of the premises;

(14) the Texas Commission on Private Security's vacating of the lease premises and the Texas Building and Procurement Commission's cancellation of the lease on behalf of the Texas Commission on Private Security without satisfying the procedural requirements of the lease and the Texas Building and Procurement Commission's refusal to make further lease payments constitute a breach of the lease;

(15) the Texas Department of Public Safety has been provided ample appropriations by the legislature;

(16) WB IND-HP, Ltd., has incurred damages in the minimum amount of \$261,251.03 in unpaid rent owed to WB IND-HP, Ltd., by the State of Texas, and is entitled to pursue relief and any damages for breach of the lease allowed by law as described by Section 107.002, Civil Practice and Remedies Code;

(17) both the Texas Department of Public Safety and the Texas Building and Procurement Commission have been unresponsive to WB IND-HP, Ltd., in their attempts to negotiate payments of the owed rent payments, and as a result, WB IND-HP, Ltd., filed a formal claim with the Texas Building and Procurement Commission dated April 28, 2005;

(18) the Texas Building and Procurement Commission and the Texas Department of Public Safety have failed and refused to make a good faith effort to resolve this dispute;

(19) on July 7, 2005, WB IND-HP, Ltd., submitted its notice of its intent to pursue a breach of contract claim against the Texas Building and Procurement Commission through administrative proceedings under Section 2260.051, Government Code;

(20) on August 1, 2005, the Texas Building and Procurement Commission responded to this notice by stating that Chapter 2260, Government Code, does not apply to leases, leaving WB IND-HP, Ltd., with no administrative remedy through which to resolve its claim; and

(21) WB IND-HP, Ltd., has exhausted all applicable administrative remedies; now, therefore, be it

RESOLVED by the Legislature of the State of Texas, That WB IND-HP, Ltd., is granted permission to sue the State of Texas, the Texas Building and Procurement Commission, and the Texas Department of Public Safety subject to Chapter 107, Civil Practice and Remedies Code, for breach of the lease, together with interest on any amounts due as may be authorized by law; and, be it further

RESOLVED, That the chairmen of the Texas Building and Procurement Commission and the Public Safety Commission be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute deletes "together with reasonable attorney's fees necessarily incurred in the litigation," and "costs of court" from the remedies WB IND-HP, Ltd. is granted permission to sue for under the breach of lease.

All else in the committee substitute is identical to the original.

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