

BILL ANALYSIS

C.S.S.B. 924
By: Brimer
Government Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Engineers and architects, and the firms that employ them, are legally responsible for the consequences of negligent errors and omissions in their design work. However, currently there is no statutory guidance as to how state agencies should address these matters. This bill establishes guidelines for the adoption of state agency procedures for recovering any costs incurred by the agency on a construction project as a result of the errors and omissions of an engineer or architect.

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

The bill amends the Government Code by adding Section 2252.904, which defines "contract," "private design professional," and "state agency." The new section created by the bill also requires a rule or policy adopted by a state agency, relating to the recovery of costs arising from an engineering or architectural error or omission by a private design professional on a project, to provide for certain actions, meet certain standards, and provide for certain processes and recognitions.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill states that a rule or policy adopted by state agency relating to the recovery of cost must provide a formula for determining the cost of errors or omissions by private design professionals; whereas, the substitute states that that a rule or policy adopted by state agency relating to the recovery of cost must provide a process for determining the cost of errors or omissions by private design professionals.

The original bill states that a rule or policy adopted by state agency relating to the recovery of cost must be consistent with the doctrine of negligence and generally accepted standards of care required of similar private design professionals; whereas, the substitute does not.

The original bill states that a rule or policy adopted by state agency relating to the recovery of cost must provide a process for filing an appeal of an agency claim for costs before the State Office of Administrative Hearings without requiring that the claim be paid before filing the appeal; whereas the substitute states that that a rule or policy adopted by state agency relating to the recovery of cost must provide for an internal management review of the agency's claim for costs may be used, if available, without requiring that the claim be paid before the internal management review may be used.

The original bill states that a rule or policy adopted by state agency relating to the recovery of cost must recognize that a de minimis level of change is likely to occur during a project; whereas the substitute states that that a rule or policy adopted by state agency relating to the recovery of cost must recognize that some errors, omissions, or changes are likely to occur during a design and construction project. The substitute then makes conforming changes.