

BILL ANALYSIS

C.S.H.B. 1041
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Although the State of Texas and its agencies are generally immune from suit under the doctrine of sovereign immunity, statutory provisions allow the adjudication of certain contract claims against state governmental agencies if the claim is for less than a specified dollar amount in damages. For a breach of contract claim that seeks a greater amount in damages, the only recourse an aggrieved party has is to seek waiver of sovereign immunity from the legislature because the law does not adequately address procedures for adjudicating such claims. C.S.H.B. 1041 seeks to address the need for such procedures by establishing a waiver of sovereign immunity for certain claims arising under written contracts with state agencies.

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

C.S.H.B. 1041 amends the Civil Practice and Remedies Code to provide that a state agency statutorily or constitutionally authorized to enter into a contract that enters into a properly executed contract for goods or services to be provided to the agency waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of an express or implied provision of a contract in which the matter in controversy exceeds \$250,000, exclusive of interest, subject to the terms and conditions of the bill's provisions. The bill limits the total amount of money awarded in an adjudication brought against a state agency for such a breach of contract to the balance due and owed by the agency 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; the amount owed for change orders or additional work required to carry out the contract; and interest as allowed by law. The bill prohibits damages awarded in an adjudication brought against a state agency arising under a contract from including consequential damages, with certain exceptions; exemplary damages; or damages for unabsorbed home office overhead.

C.S.H.B. 1041 makes adjudication procedures, including certain prerequisites for bringing a suit or an arbitration proceeding, that either are stated in the contract or are established by the state agency and expressly incorporated into the contract enforceable except to the extent those procedures conflict with the bill's provisions. The bill establishes that its provisions do not waive any of the following: a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity; sovereign immunity to suit in federal court; or sovereign immunity to a claim arising from a cause of action for negligence. The bill establishes that its provisions do not apply to an employment contract between a state agency and an employee of that agency. The bill prohibits attorney's fees incurred by a state agency or any other party in the adjudication of a claim by or against a state agency from being awarded to any party in the adjudication unless the agency has entered into a written agreement that expressly authorizes the prevailing party in the adjudication to recover its reasonable and

necessary attorney's fees. The bill establishes venue for a suit under the bill's provisions in a district court either in a county in which the events or omissions giving rise to the claim occurred or in Travis County. The bill defines "adjudication," "contract subject to this chapter," and "state agency."

C.S.H.B. 1041 amends the Government Code to exempt a claim for breach of contract to which the bill's provisions apply from provisions governing the resolution of certain contract claims against the state.

C.S.H.B. 1041 provides that the provisions of law added by the bill relating to the adjudication of claims arising under written contracts with state agencies apply only to a claim arising under a contract executed on or after September 1, 2011. The bill provides that a claim that arises under a contract executed before September 1, 2011, is governed by the law applicable to the claim immediately before the bill's effective date and provides that the law is continued in effect for that purpose. The bill provides that nothing in the bill is intended to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to a contract executed before September 1, 2011.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1041 omits a provision contained in the original establishing that the bill's provisions do not constitute a grant of immunity to suit to a state agency. The substitute contains a provision not included in the original establishing that the bill's provisions do not apply to an employment contract between a state agency and an employee of that agency. The substitute differs from the original in a nonsubstantive way by making a clarifying change.