

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 14, 2011

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1041 by Workman (Relating to the waiver of sovereign immunity for certain claims arising under written contracts with state agencies.), **Committee Report 1st House, Substituted**

There would be a significant indeterminate fiscal cost to the state from the provisions of the bill.

The bill would amend Civil Practice and Remedies Code to waive sovereign immunity to suit for breach of express or implied provisions of a contract, in excess of \$250,000, entered into by an agency of any branch of state government and institutions of higher education. The bill would place limits on adjudication awards related to such contracts and on the recovery of attorney's fees. Suits brought in federal court, claims arising from a cause of action for negligence, and claims arising from employment contracts are exempted from the bill's provisions. The bill would take effect September 1, 2011 and applies only to a claim arising under a contract executed on or after that date.

The aggregate statewide fiscal impact from the bill's provisions cannot be determined at this time because the amount of disputed state contracts to be taken to court in future years cannot be anticipated. However, agencies reported that the bill's provisions expose the state to additional liability which could result in a significant negative fiscal impact.

The Office of the Attorney General reported that the bill's provisions are likely to result in greater numbers of contract disputes by creating a financial incentive for vendors to litigate higher-dollar contract disputes against the state, rather than follow the required dispute resolution procedures provided for by Government Code Chapter 2260. Because the cases could be filed in any district court in the state, dependent upon where a substantial part of the contract was fulfilled, the bill could increase travel costs for the OAG in defending the state against such suits. The OAG estimates that a minimum of 5.5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload created by the bill's provisions.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General

LBB Staff: JOB, KJG, JI, KY, TB