

SUBJECT: Codifying TxDOT contract claim procedures

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 6 ayes — Gray, Alvarado, Bosse, Nixon, Roman, Zbranek
0 nays
3 absent — Hilbert, Dutton, Goodman

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 24 — 29-0

WITNESSES: (*On House companion HB 2118*)
For — John R. Weisman

Against — None

On — Bobbie F. Templeton, Texas Department of Transportation

BACKGROUND : Texas law does not explicitly give jurisdiction to a court to review a Texas Department of Transportation (TxDOT) claim. An unpublished opinion held that the court had no jurisdiction to hear a contract claim against TxDOT.

DIGEST: CSSB 1376 would codify current TxDOT contract claim policies. The bill would allow the Transportation Commission to establish procedures by rule for the informal resolution of contract claims arising from contracts relating to:

- designation by a local government of TxDOT as its agent for supervising, constructing, improving, equipping, maintaining or operating a county or municipal airport or air navigation facility;
- improvements, materials or maintenance of state highways; and
- procurement of professional services, including, accounting, land surveying, medicine, optometry or professional engineering.

The bill would allow claimants dissatisfied with a TxDOT resolution to request a formal administrative hearing under the Administrative Procedure Act. The director of TxDOT would be allowed to change an administrative law judge's finding of fact or conclusion of law and to vacate or modify an order. The director would have to provide a written statement containing the reason and legal basis for any changes made. The director's final order would be subject to judicial review under the substantial evidence rule. CSSB 1376 would specify that its provisions would not waive the state's sovereign immunity from liability and that these procedures would constitute the exclusive remedy at law for the resolution of contract claims at TxDOT.

CSSB 1376 would take immediate effect if finally approved by a two-thirds record vote of the membership of each house, and apply to claims pending or filed on or after its effective date.

NOTES:

The committee substitute stipulated that the bill's provisions would be the exclusive remedy at law for claims and provided that it would apply to pending and future claims.