

- SUBJECT:** Limiting the liability of road contractors
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 5 ayes — Nixon, Gattis, King, Rose, Woolley
1 nay — Y. Davis
3 absent — Capelo, Hartnett, Krusee
- WITNESSES:** For — Bob Price, Price Construction; Tracy Schieffer, A.L. Helmcamp, Inc.; Johnny Weisman, Associated General Contractors of Texas
Against — Amy K. Witherite, Texas Trial Lawyers Association
- BACKGROUND:** Contractors who repair, build, or maintain highways, roads, or streets on behalf of the state must conform to contract specifications set by the Texas Department of Transportation (TXDOT). Those contracting with a city or county must comply with the specifications set by that governmental entity, such as for placement of barricades, signs, pavement markings, and other methods of traffic control. The Texas Tort Claims Act limits TXDOT's liability to \$250,000 per person or \$500,000 per accident. Private contractors do not have limited liability.
- DIGEST:** CSHB 1699 would add Civil Practice and Remedies Code, sec. 97.002, limiting the liability of a contractor who builds, repairs, or maintains a highway, road, or street for a governmental entity. Such a contractor would not be liable for personal injury, property damage, or death arising from work performed in substantial compliance with all contract documents for the construction, repair, or maintenance.

The bill would take effect September 1, 2003.
- SUPPORTERS SAY:** CSHB 1699 would reduce the amount of misdirected litigation filed against contractors. Contractors are being sued for problems arising from the traffic-control plans on TXDOT projects, even though they have followed TXDOT's

contract requirements. Because TXDOT's liability is limited, plaintiffs are seeking to sue the party with "deep pockets."

The bill would exempt contractors from liability if they complied substantially with agency requirements. In doing so, it would help smaller contractors stay in business. Many contractors are smaller companies and cannot remain in business when they are saddled with misdirected lawsuits.

Contractors must follow the strict plans that TXDOT or another governmental entity prescribes. TXDOT plans are approved by professional engineers before being given to the contractor. Contractors should not be liable for following plans over which they have no control. CSHB 1699 would ensure that liability fell on TXDOT, which controls contract requirements.

The phrase "substantial compliance" already is defined adequately in other areas of the law, such as contract law.

OPPONENTS
SAY:

Holding contractors to a standard of "substantial compliance" with the contract could endanger the public. Road construction materials usually are included in contract requirements. If a contractor built a road in substantial compliance but used faulty materials or built a bad bridge as part of the road, the contractor would be immune from liability for sinkholes that might appear later or for a bridge that might collapse and kill or injure people. Because of TxDOT's liability limits, removing the contractor's liability would restrict the payment of damages for a job poorly done.

TXDOT requires contractors to comply fully with contract requirements or be in breach of contract and liable for damages for that breach. It makes sense that contractors should receive immunity only for complete compliance with the contract requirements.

Because CSHB 1699 would not define "substantial compliance," parties might have to go to court to determine the meaning of the term on a case-by-case basis. This could spawn more litigation than the current system.

NOTES:

The committee substitute added maintenance contractors to the list of those with limited liability and changed the phrase “substantial compliance with all specifications” in the original bill to “substantial compliance with all contract documents.”

The companion bill, SB 1432 by Averitt, was scheduled for a public hearing by the Senate Infrastructure Development and Security Committee on May 7.