

SUBJECT: Adjudicating claims arising from written contracts with state agencies

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Smithee, Laubenberg, Raymond, Schofield, Sheets

2 nays — Farrar, S. Thompson

2 absent — Clardy, Hernandez

WITNESSES: For — Corbin Van Arsdale, AGC-Texas Building Branch; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Jim Sewell, Gallagher Construction Services; Jeffrey Brooks, Texas Conservative Coalition; Michael White, Texas Construction Association; David Lancaster, Texas Society of Architects)

Against — None

BACKGROUND: The doctrine of sovereign immunity precludes a party from asserting an otherwise meritorious cause of action against a government entity unless the government consents. Local Government Code, secs. 271.152 and 262.007 waive sovereign immunity for counties, municipalities and other local government entities for any claims of breach of contract.

Civil Practice and Remedies Code, ch. 114 waives sovereign immunity for state agencies only for breach of an express provision of a contract if the amount in controversy is at least \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees.

DIGEST: HB 1124 would eliminate the \$250,000 minimum amount in controversy for waiver of sovereign immunity by state agencies in breach of contract cases. The bill would waive sovereign immunity for all breach of contract claims against a state agency, rather than for breach of express provisions of the contract.

The bill also would allow adjudication awards for breach of contract

claims against the state to include:

- compensation for increased cost as a result of owner-caused delays or acceleration, even if the contract did not provide for that compensation;
- an amount owed for any change orders or additional work the contractor was directed to perform by a state agency; and
- attorney's fees even if the contract did not expressly provide for the recovery of attorney's fees.

The bill would take effect September 1, 2015.