

SUBJECT: Limiting nondisclosure agreements in settlements with government units

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

1 absent — Farrar

WITNESSES: For — Donnis Baggett, Texas Press Association; (*Registered, but did not testify*: Vincent Giardino, Tarrant County Criminal District Attorney's Office; Michael Schneider, Texas Association of Broadcasters)

Against — (*Registered, but did not testify*: Christine Wright, City of San Antonio; Ashley Nystrom, City of Waco)

DIGEST: CSHB 53 would prohibit a state or local government unit from settling legal claims against the unit by agreeing to settlements of \$30,000 or more if the settlement also included a nondisclosure agreement. An agreement provision that violated these prohibitions would be void and unenforceable. The bill would not affect information that was privileged or confidential under other laws.

The bill would take effect September 1, 2017, and would apply to claims or actions based on causes of action that accrue on or after that date.

SUPPORTERS SAY: CSHB 53 would help ensure transparency and accountability in government actions by prohibiting nondisclosure provisions in settlements of \$30,000 or more. This would prevent governments from withholding valuable information from the public and from using taxpayer money to buy the silence of aggrieved parties. Allowing governmental units to withhold the details of a settlement makes it more difficult for taxpayers to monitor government spending.

While legal settlement agreements using taxpayer money are subject to open records laws, they often lack details about a case. When the settlements include nondisclosure provisions, the actions of the government or its employees can remain undisclosed. Cases against governments can encompass a wide range of issues, from liability for accidents, to business disagreements, to alleged discrimination, to whistleblowing. In some cases, it is the person receiving the settlement, perhaps an employee or member of the public, who can shed light on the actions of government.

For example, if a sexual harassment allegation against a city employee were settled with a nondisclosure agreement, the public, the press, and others might not know what occurred or how the government responded to an allegation. Nondisclosure agreements can allow government units to keep information, including wrongdoing, from the public, which has a right to know how taxpayer dollars are spent and how legal claims are settled.

The bill would not prohibit governments from using the tool of settlements to prevent going to court because parties would still have numerous incentives to settle claims outside the courtroom.

**OPPONENTS
SAY:**

CSHB 53 would remove a valuable tool that units of government may need in some circumstances to settle legal claims in the best interest of the government and the public. For example, a settlement that includes a nondisclosure agreement may be the best way for a government to end a troublesome employment situation in the least expensive way. In other situations, a local elected official could be accused of harassment, and any claim would be paid from the local treasury. The official being sued might agree to a settlement only if it included an agreement that prevented the claimant from continuing to make disparaging remarks in public. In such situations, the government may agree to the nondisclosure agreements to settle cases and protect taxpayers from greater liability, even if the government is not concerned about criticism.

Allowing nondisclosure agreements does not limit the ability of the public

to discover the facts surrounding settlements because individuals are not restricted from publicizing the facts of a case before a settlement. Information about the parties to government settlements and their amounts may continue to be available, even when nondisclosure provisions are included in settlements.

NOTES:

The companion bill, SB 1463 by Huffman, was referred to the Senate State Affairs Committee on March 20.

The committee substitute eliminates provisions from HB 53 as introduced that would have restricted information about settlements from being admissible in certain circumstances.