

SUBJECT: Requiring certain contracts to allow compensatory damages for delays

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 9 ayes — Hunter, Hernandez, Dean, Geren, Guillen, Metcalf, Slawson, Smithee, Spiller

0 nays

4 absent — Anchía, Raymond, S. Thompson, Turner

WITNESSES: For — Clayton Utkov, Corbin Van Arsdale, AGC-Texas Building Branch; Jose Villarreal, Vaughn Construction; Jeffrey Brannen (*Registered, but did not testify*; Geoffrey Tahuahua, Associated Builders and Contractors of Texas; Jami Sims, Real Estate Council of Austin; Mario Martinez, Regional Hispanic Contractor Association; Jennifer Fagan, Texas Construction Association; Jack Baxley, TEXO The Construction Association; Tracey Borders Mittnacht, The Associated General Contractors of Texas - Highway, Heavy, Utilities and Industrial Branch; Perry Fowler, TXWIN; Leticia Van de Putte, Zachry Corp)

Against — (*Registered, but did not testify*; Clifford Sparks, City of Dallas; Angela Hale, City Of McKinney; Tammy Narvaez, Harris County Commissioners Court; Bill Kelly, Mayor’s Office, City of Houston; Angela Hale, McKinney Chamber of Commerce; Julie Wheeler, Travis County Commissioners Court)

On — Arturo Ballesteros, North Texas Tollway Authority

BACKGROUND: Concerns have been raised that current statute allows governmental entities to shift the consequences of delays in construction contracts onto private contractors in situations where the governmental entity was responsible for the delay.

DIGEST: CSHB 2265 would establish that a provision of a construction contract between a governmental entity and a contractor could not prohibit the

award of compensatory damages to the contractor for a delay which was caused by the governmental entity or a party for which the entity was responsible.

“Compensatory damages” would mean costs incurred by a contractor as a result of a delay that could not be reasonably mitigated by the contractor. The term would not include:

- special damages;
- consequential damages;
- home office overhead, apart from labor costs;
- profit or markup on indirect costs; or
- the costs of performing additional work separately agreed to by the governmental entity and the contractor.

The bill would not restrict the inclusion of a contract provision prescribing requirements or conditions that had to be met for a contractor to seek compensatory damages. The bill’s provisions could not be waived, and would not apply to a contract for:

- natural disaster relief services involving repair of a residence; or
- the construction or repair of a critical infrastructure facility or a facility necessary to its operation that was owned or operated by the governmental entity.

The bill would take effect September 1, 2023, and would apply only to a contract entered into on or after that date.

NOTES:

According to the Legislative Budget Board, the fiscal implications of CSHB 2265 cannot be determined at this time.