

**SUBJECT:** Limitation on suits based on land surveys.

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 8 ayes — Bosse, Janek, Clark, Hope, Martinez Fischer, Nixon, Smithee, Zbranek

0 nays

1 absent — Dutton

**WITNESSES:** (*On original version:*)  
For — None

Against — Richard Hile, Texas Trial Lawyers Assoc.; John Rothermel, Stewart Title

**BACKGROUND:** A person wishing to sue for negligence generally must bring the claim within two years of when the harm occurred or could have been discovered. The Civil Practices and Remedies Code, sec. 16.011, provides that suits for negligence in a land survey that was conducted by a registered public surveyor or a licensed state land surveyor cannot be brought more than 10 years after the survey. If, however, the claimant presents the surveyor with a written claim for damages within the 10-year time limit, then the claimant has two years from the date the claim is presented to the surveyor to file suit.

**DIGEST:** CSHB 3136 would specify that Civil Practices and Remedies Code, sec. 16.011 would not extend or affect any other limitations periods provided by any other law. The bill would take effect September 1, 2001.

**SUPPORTERS SAY:** CSHB 3136 would make a needed clarification to current law regarding how long a property owner had to bring suit for a negligent survey. In 1989, the Legislature set an outside limit on suits against surveyors of 10 years after the survey. Previously, those suits could be brought within only two years of when the land owner should have discovered a problem with the survey, regardless of when that discovery should have occurred.

There is, however, some concern that sec. 16.011 actually could allow a suit to be brought within 10 years of when the problem with the survey was discovered. Such a limitations period would be too long. The defendant must be sued within a reasonable time period if the defendant is to be able to mount an adequate defense and not run into problems such as witnesses dying or forgetting key facts or documents being lost or thrown away.

CSHB 3136 also would ensure that the 10-year time limit to bring claims arising out of an error in a survey would apply only to suits for negligent survey and not to other claims that a landowner might bring that arose out of an error in a survey such as a claim under the Deceptive Trade Practices Act (DTPA) or a claim for fraud. The time limit for errors in surveys is especially long because most landowners would not discover an error in their survey until they tried to sell the land. If a long limitations period were to apply to other kinds of actions against a surveyor, such as breach of contract or fraud, the time limit would be unfairly long, since those kinds of claims are more easily and quickly discovered. Suits under the DTPA receive the benefit of a discovery rule that starts the time to sue from the time that the claimant should have discovered the harm on which the claim is based.

OPPONENTS  
SAY:

If the purpose of this bill is to clarify that suits for negligence survey never could be brought more than 10 years after the survey, then the bill would be unnecessary because the current law already is clear on that subject.

NOTES:

The original version of the bill would have reduced the statute of limitations for suits claiming an error in a land survey to four years.