

SUBJECT: Payment of interest by a local government in a breach of contract suit

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 10 ayes — Jackson, Lewis, Bohac, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson, Woolley

0 nays

1 present not voting — Castro

WITNESSES: For — Timothy Ross, Associated Builders & Contractors of Texas; (*Registered, but did not testify*: Jon Fisher, Associated Builders & Contractors of Texas; Corbin Van Arsdale, Associated General Contractors of America-Texas Building Branch; Michael White, Texas Construction Association)

Against — None

BACKGROUND: Under Local Government Code, sec. 271.152, a local government entity waives sovereign immunity from a civil lawsuit for the purposes of a breach of contract claim. Sec. 271.153 limits the available damages in breach of contract claims against a local government entity. Damages are limited to the balance due and owed, including any amounts owed for the increased cost of performing the work due to owner-caused delays or acceleration, change orders or additional work the contractor must perform in connection with the contract, attorney's fees, and interest as allowed by law.

Government Code, sec. 2251.042 governs disputed invoices with a governmental entity. If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice beginning on the date that the payment is overdue. If a dispute is resolved in favor of the governmental entity, the vendor must submit a corrected invoice, and the unpaid balance accrues interest if the corrected invoice is not paid by the appropriate date.

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DIGEST: HB 345 would allow a plaintiff in a breach of contract claim against a local government entity to recover interest as allowed by law, including interest on the unpaid balance of a disputed, overdue payment as provided by Government Code, sec. 2251.042.

The bill would take effect on September 1, 2011, and would apply only to suits commenced on or after the effective date.

SUPPORTERS SAY: HB 345 would allow for the recovery of “prompt pay interest” from local government entities in breach of contract claims, resolving a misinterpretation of the law. Government Code, sec. 2251.042, which allows for prompt pay interest from a governmental entity, was enacted in 1993. Local Government Code, sec. 271.153, which provides for “interest as allowed by law” in a contract claim against a local government, was enacted in 2005. Therefore, prompt pay interest should be interest allowed by law in 2005. However, recent court decisions in this area have not been consistent with the plain meaning of the law. HB 345 would clarify this issue.

OPPONENTS SAY: Creating an additional financial obligation for local governments could add further strain in a tight budget environment.

NOTES: The companion bill, SB 1382 by Wentworth, was referred to the Intergovernmental Relations Committee on March 22.