

**SUBJECT:** Allowing appeals from certain interlocutory orders for certain contractors

**COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment

**VOTE:** 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

**WITNESSES:** For — Timothy Herbert; (*Registered, but did not testify*: Steven Albright, Associated General Contractors of Texas-Highway Heavy Utility and Industrial Branch; Lee Parsley, Texans for Lawsuit Reform)

Against — None

**BACKGROUND:** Civil Practice and Remedies Code sec. 51.014(a) specifies which interlocutory orders made by district courts, county courts at law, statutory probate courts, or county courts can be appealed. Sec. 51.014(a)(8) allows appeal from an interlocutory order that grants or denies a plea to the jurisdiction by a governmental unit.

Under Civil Practice and Remedies Code sec. 97.002, a contractor who constructs or repairs a highway, road, or street for the Texas Department of Transportation (TxDOT) is not liable to a claimant for personal injury, property damage, or death arising from the performance of the construction or repair if, at the time of the injury, damage, or death, the contractor is in compliance with contract documents material to the condition or defect that was the proximate cause of the injury, damage, or death.

Concerns have been raised about the appeals process for interlocutory orders denying a motion for summary judgment in certain cases relating to contractors who construct or repair a highway, road, or street for TxDOT. As a governmental unit, TxDOT is allowed to appeal such an interlocutory order, and because Civil Practice and Remedies Code sec. 97.002 gives highway construction contractors working under a TxDOT

contract the same immunity as TxDOT, some have called for such contractors to have the same access as TxDOT to the expedited appeals process in presenting their immunity.

**DIGEST:**

HB 2086 would authorize the appeal of an interlocutory order made by a district or county court that denied a motion for summary judgment filed by a contractor based on the limited liability of a contractor who constructs or repairs a highway, road, or street for the Texas Department of Transportation.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.