

SUBJECT: Creating an exemption for the filing of certain third-party affidavits

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Leach, Julie Johnson, Flores, Murr, Schofield, Slawson, Vasut
1 nay — Davis
1 absent — Moody

WITNESSES: For —Corbin Van Arsdale, AGC-Texas Building Branch; Stephanie Cook (*Registered, but did not testify*: Geoffrey Tahuahua, Associated Builders and Contractors of Texas; Adam Leggett, Texas Water Infrastructure Network; Leticia Van de Putte, Zachry Corp)
Against — None

BACKGROUND: Civil Practice and Remedies Code sec. 150.002(a) states that any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, a claimant is required to file with the complaint an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who meet certain eligibility criteria.

Concerns have been raised that for some design-build projects in which design professionals and contractors are on the same design-build team, the current certificate of merit requirements have led to some parties admitting liability by getting a certificate of merit against their own team member, resulting in insurance coverage issues.

DIGEST: CSHB 2007 would add an exception to Civil Practice and Remedies Code sec. 150.002(a). A third-party plaintiff that was a member of a design-build team or firm would not be required to file an affidavit described in sec. 150.002(a) if the action or arbitration proceeding arisen out of a design-build project in which a governmental entity contracted with a single entity to provide both construction and design services for certain

construction, expansion, rehabilitation, or alternation projects.