

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 629  
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Jurisprudence  
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### **DIGEST**

Currently, unless Texas has expressly given consent to be sued, it is protected by sovereign immunity. Consequently, a state agency can sue a contractor for breach of contract, but the contractor has no recourse against a state agency's breach of contract. In recent years, the likelihood that a state agency will violate contractual agreements has increased, fewer contractors apply for jobs, and the remaining contractors translate their risks into higher bids. S.B. 629 provides regulations for a contractor to sue a unit of state government.

### **PURPOSE**

As proposed, S.B. 629 creates procedures for a contractor to sue a unit of state government and receive an award from the unit of state government or through an appropriation, depending on the award amount.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 111, as follows:

#### CHAPTER 111. CONTRACT CLAIMS AGAINST THE STATE

Sec. 111.001. DEFINITIONS. Defines "contract," "contractor," and "unit of state government."

Sec. 111.002. CLAIM FOR BREACH OF CONTRACT. Authorizes a contractor to make a claim for breach of contract against a unit of state government. Requires a contractor to assert a claim within 90 days of contract completion. Provides that a claim may be made by filing a petition with certain entities. Sets forth petition requirements. Requires certain officers to examine and negotiate the claim, in good faith, with the contractor.

Sec. 111.003. MEDIATION. Requires the parties to proceed to mediation if the claim is unresolved 30 days after its receipt. Requires mediation to be completed by the 60th day after receipt of the claim, and sets forth an exception. Prohibits the mediation period from exceeding 90 days after receipt of the claim. Provides that the contract may include terms for mediation. Prohibits the contract from requiring the contractor to waive a remedy entitled under this chapter. Requires mediation costs to be shared equally by the contractor and the unit of state government. Requires certain state government officers to respond to the claim within 30 days after the end of unsuccessful mediation.

Sec. 111.004. CONTESTED CASE HEARING. Authorizes an unsatisfied contractor to file an appeal. Sets forth appeal requirements. Requires the unit of state government to refer the claim to the State Office of Administrative Hearings for a hearing under Chapters 2001 and 2003, Government Code. Requires the agency to pay a claim if the award is \$500,000 or less, within 30 days after the issuance of the award decision, under certain conditions. Requires the proposal for decision to be sent to certain legislative authorities for appropriation consideration, if the settlement decision makes an award for more than \$500,000.

Sec. 111.005. AWARDS. Prohibits a contractor's claim award from exceeding the total value

to be received under the contract. Prohibits an award from being made for exemplary or punitive damages. Provides that Chapter 304, Finance Code, applies to an award under this chapter.

Sec. 111.006. EXCLUSION. Provides that this chapter does not apply to a claim against the Texas Department of Transportation.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Emergency clause.