

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 629  
By: Cain  
Jurisprudence  
4/20/1999  
Committee Report (Substituted)

### **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. C.S.S.B. 629 provides regulations for a contractor to sue a unit of state government.

### **PURPOSE**

As proposed, C.S.S.B. 629 creates procedures for a contractor to sue a unit of state government.

### **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 110, as follows:

#### CHAPTER 110. CONTRACT CLAIMS AGAINST THE STATE

Sec. 110.001. DEFINITIONS. Defines "contract" and "unit of state government."

Sec. 110.002. RIGHTS OF CONTRACTING PARTIES. Authorizes a claimant to proceed in a claim alleging that a unit of state government has breached a written contract for engineering or construction services. Provides that sovereign immunity to a suit is waived for purposes of an appeal under Sections 110.006 and 110.007.

Sec. 110.003. CLAIM. 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.

Sec. 110.004. NEGOTIATION AND MEDIATION. Requires certain officers to examine and negotiate the claim, in good faith, with the claimant. Sets forth required mediation procedures if the claim is not resolved by a certain deadline.

Sec. 110.005. CONTESTED CASE HEARING. Authorizes an unsatisfied claimant to file an appeal, and requires the appeal to state the factual and legal basis for the claim. Requires the contractor making the appeal and the unit of state government to agree to certain matters before the 31st after the appeal.

Sec. 110.006. ARBITRATION. Requires claims referred to arbitration to be decided in accordance with the Construction Industry Arbitration Rule of the American Arbitration Association.

Sec. 110.007. APPEAL TO COURT. Sets forth appeal procedures.

Sec. 110.0075. STANDARD OF REVIEW. Requires the court to review cases appealed

pursuant to Section 110.007 of this Act, by trial de novo.

Sec. 110.008. AWARD. Prohibits a claimant's claim award from exceeding the total value to be received under the contract, including any charge accepted by a unit of state government. Prohibits an award from being made for consequential or exemplary damages.

Sec. 110.009. VENUE. Requires an appeal to be brought in Travis County.

Sec. 110.010. SERVICE OF CITATION. Requires certain processes to be served on certain entities.

Sec. 110.011. PREJUDGMENT INTEREST. Expands the application of Chapter 304, Finance Code, to include a judgment awarded to a claimant under this chapter.

Sec. 110.012. SETTLEMENT. Authorizes the attorney general to settle or compromise an appeal brought under Section 110.007.

Sec. 110.013. PAYMENT OF JUDGMENT OR SETTLEMENT. Requires a unit of state government to pay a judgment or settlement from money appropriated for the original contract on which the suit was based. Limits the payment for a judgment or settlement to a legislative appropriation, if the unit of state government does not have money available.

Sec. 110.014. EXECUTION ON STATE PROPERTY NOT AUTHORIZED. Provides that this chapter does not authorize execution on property owned by the state or a unit of state government.

Sec. 110.015. APPLICATION OF OTHER LAWS. Provides that Chapter 107, Civil Practice and Remedies Code, does not apply to an appeal brought under Section 110.007.

Sec. 110.016. 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.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.

Redesignates proposed Chapter 111 as Chapter 110.

Amends Section 110.001, Civil Practice and Remedies Code, to delete the definition of "contractor."

Amends Section 110.002, Civil Practice and Remedies Code, to add text regarding rights of contracting parties.

Redesignates proposed Section 111.002 as 110.003, Civil Practice and Remedies Code. Changes the heading, deletes text regarding a responsibility of certain officers, and makes nonsubstantive changes.

Amends Section 110.004, Civil Practice and Remedies Code, to add text regarding negotiation and mediation.

Redesignates proposed Section 111.004 as 110.005, Civil Practice and Remedies Code, replaces the term contractor with claimant, adds text regarding receipt of an appeal, and deletes text regarding settlement decisions.

Amends Section 110.006, Civil Practice and Remedies Code, to add text regarding arbitration.

Amends Section 110.007, Civil Practice and Remedies Code, to add text regarding an appeal to court.

Amends Section 110.008, Civil Practice and Remedies Code, to add text regarding standard of review.

Redesignates proposed Section 111.005 as 110.008, Civil Practice and Remedies Code, changes the heading and makes nonsubstantive and conforming changes.

Amends Section 110.009, Civil Practice and Remedies Code, to add text regarding venue.

Amends Section 110.010, Civil Practice and Remedies Code, to add text regarding service of citation.

Amends Section 110.011, Civil Practice and Remedies Code, to add text regarding prejudgment interest.

Amends Section 110.012, Civil Practice and Remedies Code, to add text regarding a settlement.

Amends Section 110.013, Civil Practice and Remedies Code, to add text regarding payment of judgment or settlement.

Amends Section 110.014, Civil Practice and Remedies Code, to add text regarding this chapter not authorizing execution on state property.

Amends Section 110.015, Civil Practice and Remedies Code, to add text regarding application of other laws.

Redesignates proposed Section 111.006 as 110.016, Civil Practice and Remedies Code.

### SECTION 3.

Makes nonsubstantive changes.