

SUBJECT: Limiting duty to defend provisions in certain state agency contracts

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Smithee, Farrar, Gutierrez, Laubenberg, Murr, Neave, Rinaldi,
Schofield

0 nays

1 absent — Hernandez

WITNESSES: For — Steve Stagner, American Council of Engineering Companies of Texas; Jim Susman, Texas Society of Architects; (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Jon Fisher, Associated Builders and Contractors of Texas; David Lancaster, Texas Society of Architects; Ed Mazanec)

Against — None

On — (*Registered, but did not testify*: Perry Fowler, Texas Water Infrastructure Network)

BACKGROUND: Government Code, ch. 2254, subch. A is the Professional Services Procurement Act. Sec. 2254.0031 allows a state governmental entity to require a contractor to indemnify or hold harmless the state from claims and liabilities resulting from negligent acts or omissions of the contractor or its employees. A state governmental entity may not require a contractor to indemnify or hold harmless the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

Local Government Code, sec. 271.904 establishes that promises in contracts providing that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage are void and unenforceable, except for in certain circumstances. This section

allows the governmental agency to require the engineer or architect to name the governmental agency as an additional insured on its general liability insurance policy.

Observers suggest that state agencies requiring certain contractors to defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees is inconsistent with the idea that parties to a contract be responsible for their own negligence.

DIGEST: CSHB 3021 would establish that a state or governmental entity could not require a contractor to defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.

The bill also would make the laws established in Local Government Code, sec. 271.904(a)-(e) applicable to contracts between state agencies and an architect or engineer for their services under the Professional Services Procurement Act. State agencies would include a department, commission, board, office, or other agency in the executive or legislative branch, including a higher education institution, as well as entities in the judicial branch.

This bill would take effect on September 1, 2017, and would apply only to a contract for which a request for proposals or a request for qualifications was first published or distributed on or after that date.

NOTES: A companion bill, SB 1953 by Hughes, was referred to the Senate Committee on Business and Commerce on March 27.