

SUBJECT: Exempting certain design-builders from certificate of merit requirements

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody,
Schofield, Smith

0 nays

1 absent — Dutton

WITNESSES: For — Corbin Van Arsdale, AGC-Texas Building Branch; (*Registered, but did not testify*: Jennifer Fagan, Texas Construction Association; Jack Baxley, TEXO The Construction Association)

Against — (*Registered, but did not testify*: Peyton McKnight, American Council of Engineering Companies of Texas)

BACKGROUND: Civil Practice and Remedies Code sec. 150.002(a) requires that in any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, a claimant must file with the complaint an affidavit, called a certificate of merit, from a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor who:

- is competent to testify;
- holds the same professional license or registration as the defendant; and
- practices in the area of practice of the defendant and offers testimony based on the person's knowledge, skill, experience, education, training, and practice.

The 86th Legislature in 2019 enacted SB 1928 by Fallon, which extended the certificate of merit requirement for plaintiffs who file suit against certain licensed or registered professionals to include all claimants who

file such suits.

DIGEST: CSHB 3162 would exempt certain third-party plaintiffs that were design-builders or design-build firms from the requirements to file a third-party affidavit under Civil Practice and Remedies Code sec. 150.002(a) in connection with filing a third-party claim or cross-claim against a licensed or registered professional.

The exemption would apply if the action or arbitration proceeding arose out of a design-build project in which a governmental entity contracted with a single entity to provide both design and construction services for the construction, expansion, extension, rehabilitation, alteration, or repair of a facility, a building or associated structure, a civil works project, or a highway project.

The bill would take effect September 1, 2021, and would apply only to an action commenced on or after that date.