

By: Creighton

S.B. No. 1766

A BILL TO BE ENTITLED

AN ACT

relating to indemnification and duties of real property appraisers under certain governmental contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.9041 to read as follows:

Sec. 271.9041. APPRAISAL SERVICE CONTRACTS; INDEMNIFICATION LIMITATIONS; DUTIES OF APPRAISER. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract for appraisal services for real property entered into by a licensed appraiser and a governmental agency.

(c) A provision of a contract for appraisal services, or a promise in connection with the contract, is void and unenforceable if the provision requires a licensed appraiser to indemnify or hold harmless a governmental agency against liability for damage, other than damage to the extent the damage is caused by or results from an act of:

(1) negligence;

(2) intentional tort;

(3) intellectual property infringement; or

(4) failure to pay:

(A) a subcontractor or supplier committed by the

1 appraiser or the appraiser's agent;

2 (B) a consultant under contract; or

3 (C) another person over which the appraiser  
4 exercises control.

5 (d) Except as provided by Subsection (e)(2), a provision of  
6 a contract for appraisal services, or a promise in connection with  
7 the contract, is void and unenforceable if the provision requires a  
8 licensed appraiser to defend a person against a claim based wholly  
9 or partly on the negligence or fault of, or breach of contract by:

10 (1) the governmental agency that is a party to the  
11 contract;

12 (2) an employee or agent of the governmental agency;  
13 or

14 (3) another person over which the governmental agency  
15 exercises control, other than the appraiser or an employee, agent,  
16 or consultant of the appraiser.

17 (e) A contract for appraisal services may require:

18 (1) the reimbursement of a governmental agency's  
19 reasonable attorney's fees in proportion to an appraiser's  
20 liability; and

21 (2) an appraiser to name a governmental agency as an  
22 additional insured under the appraiser's general liability  
23 insurance policy and provide any defense provided by the policy.

24 (f) A contract for appraisal services must require a  
25 licensed appraiser to perform services:

26 (1) with the professional skill and care ordinarily  
27 provided by competent appraisers under the same or similar

1 circumstances and professional license; and

2 (2) as expeditiously as is prudent considering the  
3 ordinary professional skill and care of a competent appraiser.

4 (g) A provision of a contract for appraisal services  
5 establishing a different standard of care than a standard described  
6 by Subsection (f) is void and unenforceable. If a contract contains  
7 a void and unenforceable provision described by this subsection,  
8 the standard of care described by Subsection (f) applies.

9 (h) This section does not prohibit a governmental agency  
10 from including in and enforcing a provision in a contract for  
11 appraisal services that relates to the scope, fees, and schedule of  
12 a project in the contract.

13 SECTION 2. Section 271.9041, Local Government Code, as  
14 added by this Act, applies only to a contract for appraisal services  
15 for which a request for proposals or a request for qualifications is  
16 first published or distributed on or after the effective date of  
17 this Act.

18 SECTION 3. This Act takes effect September 1, 2023.