

AN ACT

relating to the ability of a county to sue and be sued.

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

SECTION 1. Section 89.004, Local Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), a [A] person may not file suit [sue] on a claim against a county or an elected or appointed county official in the official's capacity as an appointed or elected official unless the person has presented the claim to the commissioners court and the commissioners court neglects or refuses [has neglected or refused] to pay all or part of the claim before the 60th day after the date of the presentation of the claim.

(c) A person may file a suit for injunctive relief against a county. After the court's ruling on the application for temporary injunctive relief, any portion of the suit that seeks monetary damages shall be abated until the claim is presented to the commissioners court and the commissioners court neglects or refuses to pay all or part of the claim by the 60th day after the date of the presentation of the claim.

SECTION 2. Subchapter A, Chapter 262, Local Government Code, is amended by adding Section 262.007 to read as follows:

Sec. 262.007. SUIT AGAINST COUNTY ARISING UNDER CERTAIN

1 CONTRACTS. (a) A county that is a party to a written contract for  
2 engineering, architectural, or construction services or for goods  
3 related to engineering, architectural, or construction services  
4 may sue or be sued, plead or be impleaded, or defend or be defended  
5 on a claim arising under the contract. A suit on the contract  
6 brought by a county shall be brought in the name of the county. A  
7 suit on the contract brought against a county shall identify the  
8 county by name and must be brought in a state court in that county.

9 (b) The total amount of money recoverable from a county on a  
10 claim for breach of the contract is limited to the following:

11 (1) the balance due and owed by the county under the  
12 contract as it may have been amended, including any amount owed as  
13 compensation for the increased cost to perform the work as a direct  
14 result of owner-caused delays or acceleration;

15 (2) the amount owed for change orders or additional  
16 work required to carry out the contract;

17 (3) reasonable and necessary attorney's fees that are  
18 equitable and just; and

19 (4) interest as allowed by law.

20 (c) An award of damages under this section may not include:

21 (1) consequential damages, except as allowed under  
22 Subsection (b)(1);

23 (2) exemplary damages; or

24 (3) damages for unabsorbed home office overhead.

25 (d) This section does not waive a defense or a limitation on  
26 damages available to a party to a contract, other than a bar against  
27 suit based on sovereign immunity.

1       (e) This section does not waive sovereign immunity to suit  
2 in federal court.

3       SECTION 3. Chapter 89, Local Government Code, is amended by  
4 adding Section 89.0041 to read as follows:

5       Sec. 89.0041. NOTICE OF SUIT AGAINST COUNTY. (a) A person  
6 filing suit against a county or against a county official in the  
7 official's capacity as a county official shall deliver written  
8 notice to:

9           (1) the county judge; and

10          (2) the county or district attorney having  
11 jurisdiction to defend the county in a civil suit.

12       (b) The written notice must be delivered by certified or  
13 registered mail by the 30th business day after suit is filed and  
14 contain:

15           (1) the style and cause number of the suit;

16           (2) the court in which the suit was filed; and

17           (3) the date on which the suit was filed.

18       (c) If a person does not give notice as required by this  
19 section, the court in which the suit is pending shall dismiss the  
20 suit on a motion for dismissal made by the county or the county  
21 official.

22       SECTION 4. (a) This Act takes effect September 1, 2003.

23       (b) This Act applies only to a claim arising under a  
24 contract executed on or after September 1, 2003. A claim that  
25 arises under a contract executed before September 1, 2003, is  
26 governed by the law as it existed on the date the contract is  
27 executed, and the former law is continued in effect for that

1 purpose.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1017 passed the Senate on April 23, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 29, 2003, by a viva-voce vote.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1017 passed the House, with amendments, on May 25, 2003, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor