

By: Van Arsdale

H.B. No. 707

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the ability of a home-rule municipality to sue and be
3 sued.

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

5 SECTION 1. Section 51.075, Local Government Code, is
6 amended to read as follows:

7 Sec. 51.075. AUTHORITY RELATING TO LAWSUITS; PRESENTATION
8 OF CLAIM. (a) The municipality may plead and be impleaded in any
9 court.

10 (b) Except as provided by Subsection (c), a person may not
11 file suit on a claim against a municipality or an elected or
12 appointed municipal official in the official's capacity as an
13 appointed or elected official unless the person has presented the
14 claim to the governing body of the municipality and the governing
15 body neglects or refuses to pay all or part of the claim before the
16 60th day after the date of the presentation of the claim.

17 (c) A person may file a suit for injunctive relief against a
18 municipality. After the court's ruling on the application for
19 temporary injunctive relief, any portion of the suit that seeks
20 monetary damages shall be abated until the claim is presented to the
21 governing body of the municipality and the governing body neglects
22 or refuses to pay all or part of the claim before the 60th day after
23 the date of the presentation of the claim.

24 SECTION 2. Subchapter E, Chapter 51, Local Government Code,

1 is amended by adding Section 51.0751 to read as follows:

2 Sec. 51.0751. NOTICE OF SUIT AGAINST MUNICIPALITY. (a) A
3 person filing suit against a municipality or against a municipal
4 official in the official's capacity as a municipal official shall
5 deliver written notice to:

6 (1) the mayor of the municipality; and

7 (2) the city attorney or other attorney having
8 jurisdiction to represent the municipality in a civil suit.

9 (b) The written notice must be delivered by certified or
10 registered mail before the 30th business day after the date the suit
11 is filed and must contain:

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

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

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

15 (c) If a person does not give notice as required by this
16 section, the court in which the suit is pending shall dismiss the
17 suit on a motion for dismissal made by the municipality or the
18 municipal official.

19 SECTION 3. Subchapter A, Chapter 252, Local Government
20 Code, is amended by adding Section 252.004 to read as follows:

21 Sec. 252.004. SUIT AGAINST MUNICIPALITY ARISING UNDER
22 CERTAIN CONTRACTS. (a) A home-rule municipality that is a party to
23 a written contract for engineering, architectural, or construction
24 services or for goods related to engineering, architectural, or
25 construction services may sue or be sued, plead or be impleaded, or
26 defend or be defended on a claim arising under the contract. A suit
27 on the contract brought by a municipality shall be brought in the

1 name of the municipality. A suit on the contract brought against a
2 municipality shall identify the municipality by name and must be
3 brought in a state court in a county in which the municipality is
4 wholly or partly located.

5 (b) The total amount of money recoverable from a
6 municipality on a claim for breach of the contract is limited to the
7 following:

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

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

14 (3) reasonable and necessary attorney's fees that are
15 equitable and just; and

16 (4) interest as allowed by law.

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

18 (1) consequential damages, except as allowed under
19 Subsection (b)(1);

20 (2) exemplary damages; or

21 (3) damages for unabsorbed home office overhead.

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

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

27 SECTION 4. (a) Section 51.075, Local Government Code, as

1 amended by this Act, and Section 51.0751, Local Government Code, as
2 added by this Act, apply only to a suit filed on or after September
3 1, 2005. A suit filed before September 1, 2005, is governed by the
4 law as it existed on the date the suit was filed, and the former law
5 is continued in effect for that purpose.

6 (b) Section 252.004, Local Government Code, as added by this
7 Act, applies only to a claim arising under a contract executed on or
8 after September 1, 2005. A claim that arises under a contract
9 executed before September 1, 2005, is governed by the law as it
10 existed on the date the contract is executed, and the former law is
11 continued in effect for that purpose.

12 SECTION 5. This Act takes effect September 1, 2005.