

By: Nixon, Van Arsdale

H.B. No. 2039

A BILL TO BE ENTITLED

AN ACT

relating to the adjudication of claims arising under written contracts with local governmental entities.

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

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

SUBCHAPTER I. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN CONTRACTS WITH LOCAL GOVERNMENTAL ENTITIES

Sec. 271.151. DEFINITIONS. In this subchapter:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the bringing of an arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract subject to this subchapter for the arbitration proceedings.

(2) "Contract subject to this subchapter" means a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity.

(3) "Local governmental entity" means a political subdivision of this state, other than a county or a unit of state government, as that term is defined by Section 2260.001, Government Code, including a:

(A) municipality;

1                   (B) public school district and junior college  
2 district; and

3                   (C) special-purpose district or authority,  
4 including any levee improvement district, drainage district,  
5 irrigation district, water improvement district, water control and  
6 improvement district, water control and preservation district,  
7 freshwater supply district, navigation district, conservation and  
8 reclamation district, soil conservation district, communication  
9 district, public health district, emergency service organization,  
10 and river authority.

11           Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN  
12 CLAIMS. A local governmental entity that is authorized by statute  
13 or the constitution to enter into a contract and that enters into a  
14 contract subject to this subchapter waives sovereign immunity to  
15 suit for the purpose of adjudicating a claim arising under the  
16 contract, subject to the terms and conditions of this subchapter.

17           Sec. 271.153. LIMITATIONS ON ADJUDICATION AWARDS. (a) The  
18 total amount of money awarded in an adjudication brought against a  
19 local governmental entity arising under a contract subject to this  
20 subchapter is limited to the following:

21                   (1) the balance due and owed by the local governmental  
22 entity under the contract as it may have been amended, including any  
23 amount owed as compensation for the increased cost to perform the  
24 work as a direct result of owner-caused delays or acceleration;

25                   (2) the amount owed for change orders or additional  
26 work required to carry out the contract; and

27                   (3) interest as allowed by law.

1        (b) Damages awarded in an adjudication brought against a  
2 local governmental entity arising under a contract subject to this  
3 subchapter may not include:

4            (1) consequential damages, except as allowed under  
5 Subsection (a)(1);

6            (2) exemplary damages; or

7            (3) damages for unabsorbed home office overhead.

8        Sec. 271.154. CONTRACTUAL ADJUDICATION PROCEDURES  
9 ENFORCEABLE. Adjudication procedures, including requirements for  
10 serving notices or engaging in alternative dispute resolution  
11 proceedings before bringing a suit or an arbitration proceeding,  
12 that are stated in the contract subject to this subchapter or that  
13 are established by the local governmental entity and expressly  
14 incorporated into the contract are enforceable except to the extent  
15 those procedures conflict with the terms of this subchapter.

16        Sec. 271.155. NO WAIVER OF OTHER DEFENSES. This subchapter  
17 does not waive a defense or a limitation on damages available to a  
18 party to a contract, other than a bar against suit based on  
19 sovereign immunity.

20        Sec. 271.156. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL  
21 COURT. This subchapter does not waive sovereign immunity to suit in  
22 federal court.

23        Sec. 271.157. NO GRANT OF IMMUNITY TO SUIT. Nothing in this  
24 subchapter shall constitute a grant of immunity to suit to a local  
25 governmental entity.

26        SECTION 2. (a) Subchapter I, Chapter 271, Local Government  
27 Code, as added by this Act, applies only to a claim arising under a

1 contract executed on or after September 1, 2005. A claim that  
2 arises under a contract executed before September 1, 2005, is  
3 governed by the law as it existed on the date the contract is  
4 executed, and the former law is continued in effect for that  
5 purpose.

6 (b) Nothing in this Act is intended to create, rescind,  
7 expand, or limit any waiver of sovereign immunity to suit  
8 applicable to a contract executed before September 1, 2005.

9 SECTION 3. This Act takes effect September 1, 2005.