

1 AN ACT

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

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

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

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

9 Sec. 271.151. DEFINITIONS. In this subchapter:

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

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

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

24 (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 for breach of 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 for breach of 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 the contractor is directed to perform by a local governmental
27 entity in connection with the contract; and

1 (3) interest as allowed by law.

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

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

7 (2) exemplary damages; or

8 (3) damages for unabsorbed home office overhead.

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

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

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

25 Sec. 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
26 LIABILITY. This subchapter does not waive sovereign immunity to
27 suit for a cause of action for a negligent or intentional tort.

1 Sec. 271.158. NO GRANT OF IMMUNITY TO SUIT. Nothing in this
2 subchapter shall constitute a grant of immunity to suit to a local
3 governmental entity.

4 Sec. 271.159. NO RECOVERY OF ATTORNEY'S FEES. Attorney's
5 fees incurred by a local governmental entity or any other party in
6 the adjudication of a claim by or against a local governmental
7 entity shall not be awarded to any party in the adjudication unless
8 the local governmental entity has entered into a written agreement
9 that expressly authorizes the prevailing party in the adjudication
10 to recover its reasonable and necessary attorney's fees by specific
11 reference to this section.

12 Sec. 271.160. JOINT ENTERPRISE. A contract entered into by
13 a local government entity is not a joint enterprise for liability
14 purposes.

15 SECTION 2. Sections 271.152, 271.153, and 271.154, Local
16 Government Code, as added by this Act, apply to a claim that arises
17 under a contract executed before the effective date of this Act only
18 if sovereign immunity has not been waived with respect to the claim
19 before the effective date of this Act. A claim that arises under a
20 contract executed before the effective date of this Act and with
21 respect to which sovereign immunity has been waived is governed by
22 the law in effect on the date the contract was executed, and the
23 former law is continued in effect for that purpose.

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

President of the Senate

Speaker of the House

I certify that H.B. No. 2039 was passed by the House on April 21, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2039 on May 23, 2005, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2039 was passed by the Senate, with amendments, on May 20, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor