

1-1 By: Nixon, Van Arsdale (Senate Sponsor - Wentworth) H.B. No. 2039
1-2 (In the Senate - Received from the House April 22, 2005;
1-3 April 25, 2005, read first time and referred to Committee on State
1-4 Affairs; May 18, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 18, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2039 By: Madla

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the adjudication of claims arising under written
1-11 contracts with local governmental entities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 271, Local Government Code, is amended
1-14 by adding Subchapter I to read as follows:

1-15 SUBCHAPTER I. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN
1-16 CONTRACTS WITH LOCAL GOVERNMENTAL ENTITIES

1-17 Sec. 271.151. DEFINITIONS. In this subchapter:

1-18 (1) "Adjudication" of a claim means the bringing of a
1-19 civil suit and prosecution to final judgment in county or state
1-20 court and includes the bringing of an arbitration proceeding and
1-21 prosecution to final resolution in accordance with any mandatory
1-22 procedures established in the contract subject to this subchapter
1-23 for the arbitration proceedings.

1-24 (2) "Contract subject to this subchapter" means a
1-25 written contract stating the essential terms of the agreement for
1-26 providing goods or services to the local governmental entity that
1-27 is properly executed on behalf of the local governmental entity.

1-28 (3) "Local governmental entity" means a political
1-29 subdivision of this state, other than a county or a unit of state
1-30 government, as that term is defined by Section 2260.001, Government
1-31 Code, including a:

1-32 (A) municipality;

1-33 (B) public school district and junior college
1-34 district; and

1-35 (C) special-purpose district or authority,
1-36 including any levee improvement district, drainage district,
1-37 irrigation district, water improvement district, water control and
1-38 improvement district, water control and preservation district,
1-39 freshwater supply district, navigation district, conservation and
1-40 reclamation district, soil conservation district, communication
1-41 district, public health district, emergency service organization,
1-42 and river authority.

1-43 Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN
1-44 CLAIMS. A local governmental entity that is authorized by statute
1-45 or the constitution to enter into a contract and that enters into a
1-46 contract subject to this subchapter waives sovereign immunity to
1-47 suit for the purpose of adjudicating a claim for breach of an
1-48 express or implied provision of the contract, subject to the terms
1-49 and conditions of this subchapter.

1-50 Sec. 271.153. LIMITATIONS ON ADJUDICATION AWARDS. (a) The
1-51 total amount of money awarded in an adjudication brought against a
1-52 local governmental entity for breach of an express or implied
1-53 provision of a contract subject to this subchapter is limited to the
1-54 following:

1-55 (1) the balance due and owed by the local governmental
1-56 entity under the contract as it may have been amended, including any
1-57 amount owed as compensation for the increased cost to perform the
1-58 work as a direct result of owner-caused delays or acceleration;

1-59 (2) the amount owed for change orders or additional
1-60 work required to carry out the contract; and

1-61 (3) interest as allowed by law.

1-62 (b) Damages awarded in an adjudication brought against a
1-63 local governmental entity arising under a contract subject to this

2-1 subchapter may not include:
 2-2 (1) consequential damages, except as allowed under
 2-3 Subsection (a)(1);
 2-4 (2) exemplary damages; or
 2-5 (3) damages for unabsorbed home office overhead.

2-6 Sec. 271.154. CONTRACTUAL ADJUDICATION PROCEDURES
 2-7 ENFORCEABLE. Adjudication procedures, including requirements for
 2-8 serving notices or engaging in alternative dispute resolution
 2-9 proceedings before bringing a suit or an arbitration proceeding,
 2-10 that are stated in the contract subject to this subchapter or that
 2-11 are established by the local governmental entity and expressly
 2-12 incorporated into the contract are enforceable except to the extent
 2-13 those procedures conflict with the terms of this subchapter.

2-14 Sec. 271.155. NO WAIVER OF OTHER DEFENSES. This subchapter
 2-15 does not waive a defense or a limitation on damages available to a
 2-16 party to a contract, other than a bar against suit based on
 2-17 sovereign immunity.

2-18 Sec. 271.156. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL
 2-19 COURT. This subchapter does not waive sovereign immunity to suit in
 2-20 federal court.

2-21 Sec. 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
 2-22 LIABILITY. This subchapter does not waive sovereign immunity to a
 2-23 claim arising from a cause of action for negligence.

2-24 Sec. 271.158. NO GRANT OF IMMUNITY TO SUIT. Nothing in this
 2-25 subchapter shall constitute a grant of immunity to suit to a local
 2-26 governmental entity.

2-27 Sec. 271.159. NO RECOVERY OF ATTORNEY'S FEES. Attorney's
 2-28 fees incurred by a local governmental entity or any other party in
 2-29 the adjudication of a claim by or against a local governmental
 2-30 entity shall not be awarded to any party in the adjudication unless
 2-31 the local governmental entity has entered into a written agreement
 2-32 that expressly authorizes the prevailing party in the adjudication
 2-33 to recover its reasonable and necessary attorney's fees.

2-34 SECTION 2. (a) Subchapter I, Chapter 271, Local Government
 2-35 Code, as added by this Act, applies only to a claim arising under a
 2-36 contract executed on or after September 1, 2005. A claim that
 2-37 arises under a contract executed before September 1, 2005, is
 2-38 governed by the law as it existed on the date the contract is
 2-39 executed, and the former law is continued in effect for that
 2-40 purpose.

2-41 (b) Nothing in this Act is intended to create, rescind,
 2-42 expand, or limit any waiver of sovereign immunity to suit
 2-43 applicable to a contract executed before September 1, 2005.

2-44 SECTION 3. This Act takes effect September 1, 2005.

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