

By: Nixon

H.B. No. 2990

A BILL TO BE ENTITLED

AN ACT

relating to the immunity of certain governmental entities from suits arising under certain contracts.

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

SECTION 1. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 111 to read as follows:

CHAPTER 111. WAIVER OF IMMUNITY TO SUIT ARISING UNDER CERTAIN CONTRACTS

Sec. 111.001. POLITICAL SUBDIVISION. In this chapter, "political subdivision" means a municipality or a special district or authority created by or under a local or general law or the Texas Constitution, including but not limited to a school district, junior college district, hospital district, regional tollway authority, regional mobility authority, or conservation and reclamation district. The term does not include a county.

Sec. 111.002. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE. (a) Sovereign immunity to suit is waived and abolished for a political subdivision that is a party to a written contract for engineering, architectural, or construction services or for goods related to engineering, architectural, or construction services to the extent of a claim arising under the contract, and the political subdivision may sue or be sued, plead or be impleaded, or defend or be defended on a claim arising under the contract.

(b) This section does not waive a defense or a limitation on

1 damages available to a party to a contract, other than a bar against
2 suit based on sovereign immunity.

3 (c) This section does not waive sovereign immunity to suit
4 in federal court.

5 Sec. 111.003. SUIT AGAINST POLITICAL SUBDIVISION ARISING
6 UNDER CERTAIN CONTRACTS. A suit on a contract described by Section
7 111.002(a) brought by a political subdivision shall be brought in
8 the name of the political subdivision. A suit on the contract
9 brought against a political subdivision shall identify the
10 political subdivision by name and must be brought in a state court
11 in a county in which the political subdivision is located.

12 Sec. 111.004. AMOUNT RECOVERABLE. (a) The total amount of
13 money recoverable from a political subdivision on a claim for
14 breach of the contract is limited to:

15 (1) the balance due and owed by the political
16 subdivision under the contract and any subsequent amendments,
17 including any amount owed as compensation for the increased cost to
18 perform the work as a direct result of owner-caused delays or
19 acceleration;

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

22 (3) reasonable and necessary attorney's fees that are
23 equitable and just; and

24 (4) interest as allowed by law.

25 (b) An award of damages under this section may not include:

26 (1) consequential damages, except as allowed under
27 Subsection (a)(1);

1 (2) exemplary damages; or

2 (3) damages for unabsorbed home office overhead.

3 Sec. 111.005. PRESENTATION OF CLAIM. (a) Except as
4 provided by Subsection (c), a person may not file suit under this
5 chapter on a claim against a political subdivision or an elected or
6 appointed political subdivision official in the official's
7 capacity as an elected or appointed official unless the person has
8 presented the claim to the governing body of the political
9 subdivision and the governing body neglects or refuses to pay all or
10 part of the claim before the 60th day after the date of the
11 presentation of the claim.

12 (b) If the plaintiff in a suit against a political
13 subdivision does not recover more than the governing body offered
14 to pay on presentation of the claim, the plaintiff shall pay the
15 costs of the suit.

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

23 Sec. 111.006. NOTICE TO POLITICAL SUBDIVISION. (a) A
24 person filing suit against a political subdivision or against a
25 political subdivision official in the official's capacity as an
26 official shall deliver written notice to:

27 (1) the presiding officer of the governing body of the

1 political subdivision; and

2 (2) the attorney having jurisdiction to defend the
3 political subdivision in a civil suit.

4 (b) The written notice must be delivered by certified or
5 registered mail not later than the 30th business day after the suit
6 is filed and contain:

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

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

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

10 (c) If a person does not give notice as required by this
11 section, the court in which the suit is pending shall dismiss the
12 suit on a motion for dismissal made by the political subdivision or
13 the political subdivision official.

14 SECTION 2. Section 262.007(a), Local Government Code, is
15 amended to read as follows:

16 (a) Sovereign immunity is waived and abolished for a [A]
17 county that is a party to a written contract for engineering,
18 architectural, or construction services or for goods related to
19 engineering, architectural, or construction services to the extent
20 of a claim arising under the contract, and the county may sue or be
21 sued, plead or be impleaded, or defend or be defended on a claim
22 arising under the contract. A suit on the contract brought by a
23 county shall be brought in the name of the county. A suit on the
24 contract brought against a county shall identify the county by name
25 and must be brought in a state court in that county.

26 SECTION 3. (a) With respect to any political subdivision
27 for which the law existing before September 1, 2005, provided that

1 the political subdivision may sue and be sued for any reason or on a
2 claim arising under a contract, this Act clarifies that the intent
3 of the legislature in enacting that law was to waive the sovereign
4 immunity to suit of that political subdivision. This Act clarifies
5 that the intent of the 78th Legislature, Regular Session, 2003, in
6 enacting Section 262.007, Local Government Code, was to waive a
7 county's sovereign immunity to suit with respect to a contract
8 described by that section.

9 (b) With respect to a political subdivision for which the
10 law existing before September 1, 2005, did not provide that the
11 political subdivision may sue and be sued on a claim arising under a
12 contract, the change in law made by this Act applies only to a claim
13 arising under a contract executed on or after September 1, 2005. A
14 claim that arises under a contract executed before September 1,
15 2005, is governed by the law in effect when the contract was
16 executed, and the former law is continued in effect for that
17 purpose.

18 SECTION 4. This Act takes effect September 1, 2005.