

By: Strama

H.C.R. No. 138

CONCURRENT RESOLUTION

1 WHEREAS, WB IND-HP, Ltd., alleges that:

2 (1) on or about August 8, 2002, the Texas Building and  
3 Procurement Commission entered into a leasing contract with WB  
4 IND-HP, Ltd., for 44,456 square feet of net usable office space  
5 located at 4616 West Howard Lane in Austin, Texas;

6 (2) 10,850 square feet of that office space was leased  
7 by the Texas Building and Procurement Commission on behalf of the  
8 Texas Commission on Private Security;

9 (3) the term of the lease was 60 months and  
10 contractually scheduled to end on October 31, 2007;

11 (4) at or shortly after the commencement of the lease,  
12 the Texas Commission on Private Security took occupancy of the  
13 building;

14 (5) the Texas Commission on Private Security ceased to  
15 use the space for conducting the affairs of the Texas Commission on  
16 Private Security on August 31, 2003;

17 (6) the Texas Building and Procurement Commission,  
18 through the Texas Commission on Private Security, ceased making  
19 lease payments after August 2003;

20 (7) the Texas Building and Procurement Commission did  
21 not send any notice to attempt to cancel the lease until April 29,  
22 2004;

23 (8) the Texas Building and Procurement Commission  
24 admits that WB IND-HP, Ltd., was a responsive landlord and fully

1 performed on all of its duties to the Texas Commission on Private  
2 Security;

3 (9) the Texas Commission on Private Security and its  
4 successor, the Texas Department of Public Safety, continued to  
5 occupy the space by leaving furniture and office equipment in the  
6 space until May 2005;

7 (10) the lease between WB IND-HP, Ltd., and the Texas  
8 Building and Procurement Commission states that the contract "is  
9 made contingent upon the continuation of federally funded programs,  
10 or upon the availability of state funds appropriated by the  
11 Legislature, to cover the full term and cost of this lease. In the  
12 event a curtailment of federally funded programs occurs, or in the  
13 event state appropriated funds are unavailable, the Building and  
14 Procurement Commission, hereinafter referred to as the Commission,  
15 may assign another State agency to the space, or a part thereof,  
16 covered by this lease. Should the Commission be unable to find  
17 another State agency or agencies to fill, or partially fill the  
18 space, the Commission, upon written notice to the Lessor, either  
19 may terminate this lease, or adjust it in accordance with the  
20 provisions of this lease";

21 (11) the Texas Building and Procurement Commission has  
22 not shown that state funds have not been appropriated to the Texas  
23 Commission on Private Security or its successor, the Texas  
24 Department of Public Safety;

25 (12) the Texas Building and Procurement Commission has  
26 been unable to find another state agency or agencies to take over  
27 the Texas Commission on Private Security lease;

1           (13) by assuming the responsibilities of the Texas  
2 Commission on Private Security under House Bill 28 (enacted by the  
3 78th Legislature, 3rd Called Session, 2003), the Texas Department  
4 of Public Safety is still in possession of the premises;

5           (14) the Texas Commission on Private Security's  
6 vacating of the lease premises and the Texas Building and  
7 Procurement Commission's cancellation of the lease on behalf of the  
8 Texas Commission on Private Security without satisfying the  
9 procedural requirements of the lease and the Texas Building and  
10 Procurement Commission's refusal to make further lease payments  
11 constitute a breach of the lease;

12           (15) the Texas Department of Public Safety has been  
13 provided ample appropriations by the legislature;

14           (16) WB IND-HP, Ltd., has incurred damages in the  
15 minimum amount of \$261,251.03 in unpaid rent owed to WB IND-HP,  
16 Ltd., by the State of Texas, and is entitled to pursue relief and  
17 any damages for breach of the lease allowed by law as described by  
18 Section 107.002, Civil Practice and Remedies Code;

19           (17) both the Texas Department of Public Safety and  
20 the Texas Building and Procurement Commission have been  
21 unresponsive to WB IND-HP, Ltd., in their attempts to negotiate  
22 payments of the owed rent payments, and as a result, WB IND-HP,  
23 Ltd., filed a formal claim with the Texas Building and Procurement  
24 Commission dated April 28, 2005;

25           (18) the Texas Building and Procurement Commission and  
26 the Texas Department of Public Safety have failed and refused to  
27 make a good faith effort to resolve this dispute;

1           (19) On July 7, 2005, WB IND-HP, Ltd., submitted its  
2 notice of its intent to pursue a breach of contract claim against  
3 the Texas Building and Procurement Commission through  
4 administrative proceedings under Section 2260.051, Government  
5 Code;

6           (20) On August 1, 2005, the Texas Building and  
7 Procurement Commission responded to this notice by stating that  
8 Chapter 2260, Government Code, does not apply to leases, leaving WB  
9 IND-HP, Ltd., with no administrative remedy through which to  
10 resolve its claim; and

11           (21) WB IND-HP, Ltd., has exhausted all applicable  
12 administrative remedies; now, therefore, be it

13           RESOLVED by the Legislature of the State of Texas, That WB  
14 IND-HP, Ltd., is granted permission to sue the State of Texas, the  
15 Texas Building and Procurement Commission, and the Texas Department  
16 of Public Safety subject to Chapter 107, Civil Practice and  
17 Remedies Code, for breach of the lease, together with reasonable  
18 attorney's fees necessarily incurred in the litigation, interest on  
19 any amounts due as may be authorized by law, and costs of court;  
20 and, be it further

21           RESOLVED, That the chairmen of the Texas Building and  
22 Procurement Commission and the Public Safety Commission be served  
23 process as provided by Section 107.002(a)(3), Civil Practice and  
24 Remedies Code.