

1-1 By: Wentworth S.C.R. No. 42
1-2 (In the Senate - Filed March 13, 2007; March 27, 2007, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 12, 2007, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 12, 2007, sent to printer.)

1-6 SENATE CONCURRENT RESOLUTION

1-7 WHEREAS, Maria Isabel Guerrero-McDonald and
1-8 Guerrero-McDonald & Associates, Incorporated, allege that:

1-9 (1) on March 22, 1994, subsequent to the submittal and
1-10 acceptance of a bid, Pelzel & Associates entered into a contractual
1-11 agreement with Travis County for the construction of the Travis
1-12 County Precinct One Office Building in Austin, Texas;

1-13 (2) the terms for the construction of the building specified
1-14 that the work should be substantially completed within 150 calendar
1-15 days, on December 8, 1994, and that in the event of late completion
1-16 Travis County would sustain and retain liquidated damages in the
1-17 amount of \$250 for each calendar day beyond the contractually
1-18 required date for substantial completion of the project;

1-19 (3) the final completion date for the construction of the
1-20 building was December 29, 1994, 21 days beyond the contractually
1-21 required date for substantial completion;

1-22 (4) Travis County retained liquidated damages in the amount
1-23 of \$5,500, and Pelzel & Associates was required to prove at a
1-24 significant expense that the actions of Travis County caused the
1-25 delayed completion date;

1-26 (5) Pelzel & Associates presented its claim to the Travis
1-27 County Commissioners Court, at which time Travis County admitted
1-28 that no liquidated damages were justified and that Travis County
1-29 was at fault for delays that had indeed damaged Pelzel & Associates,
1-30 the cost of which, together with the cost of proving these facts,
1-31 totals over \$100,000;

1-32 (6) Travis County offered to relinquish its claim for
1-33 liquidated damages only, but threatened to claim sovereign immunity
1-34 if Pelzel & Associates demanded additional damages;

1-35 (7) a final offer to resolve the matter was made by the
1-36 Pelzel & Associates attorney on April 25, 1995, for approximately
1-37 one-third of the total damages, but Travis County did not respond to
1-38 this offer;

1-39 (8) on October 3, 1995, Pelzel & Associates brought suit
1-40 against Travis County in the District Court of Travis County for
1-41 payment due, for the cost of proving its case, and for interest to
1-42 date, and Travis County denied all allegations, seeking summary
1-43 judgment regarding sovereign immunity from suit and the dismissal
1-44 of Pelzel & Associates' cause, premised on lack of jurisdiction and
1-45 based on immunity from suit rather than on the merits of the case;

1-46 (9) in June 1999, Pelzel & Associates changed its name to
1-47 Guerrero-McDonald & Associates, Incorporated;

1-48 (10) on November 22, 1999, the trial court signed an order
1-49 denying the plea to the jurisdiction and amended motion for summary
1-50 judgment;

1-51 (11) on December 16, 1999, Travis County filed a notice of
1-52 appeal with the Third Court of Appeals for an interlocutory appeal
1-53 of the trial court's decision;

1-54 (12) during the appeals process, the parties engaged in
1-55 mediation on June 1, 2000; however, no decision was reached, and the
1-56 parties agreed to a continuance allowing Guerrero-McDonald &
1-57 Associates, Incorporated, time to provide additional
1-58 documentation;

1-59 (13) on October 19, 2000, the Third Court of Appeals
1-60 affirmed the order of the trial court, and subsequently denied a
1-61 motion for rehearing requested by Travis County on November 30,
1-62 2000;

1-63 (14) Travis County filed a petition for review with the
1-64 Supreme Court of Texas, which was granted, briefs were filed, and

2-1 oral arguments were held on November 28, 2001;

2-2 (15) on April 30, 2002, pending the decision of the Supreme
2-3 Court of Texas, both parties filed a joint motion to retain case on
2-4 docket and objection to alternative dispute resolution with the
2-5 intent that, should the supreme court render in favor of Travis
2-6 County, the case would be abated until legislative consent was
2-7 obtained;

2-8 (16) on May 9, 2002, the Supreme Court of Texas rendered its
2-9 opinion, finding in favor of Travis County and reversing the Third
2-10 Court of Appeals' decision, its findings being made more on the
2-11 merits of Travis County's case than on their allegation of
2-12 sovereign immunity, in spite of the dissenting opinion of Justice
2-13 Enoch that the court continues to "keep the courthouse doors
2-14 locked" by allowing the county to "interpose sovereign immunity
2-15 from suit"; now, therefore, be it

2-16 RESOLVED by the Legislature of the State of Texas, That Maria
2-17 Isabel Guerrero-McDonald and Guerrero-McDonald & Associates,
2-18 Incorporated, are granted permission to sue Travis County in the
2-19 manner described for a suit against the state under Chapter 107,
2-20 Civil Practice and Remedies Code; and, be it further

2-21 RESOLVED, That the suit authorized by this resolution shall
2-22 be brought in Travis County; and, be it further

2-23 RESOLVED, That the total of all damages awarded in the suit
2-24 authorized by this resolution, including any court costs, and any
2-25 prejudgment interest awarded under law, may not exceed \$3 million
2-26 plus the amount of any attorney's fees authorized to be awarded
2-27 under law, and that Maria Isabel Guerrero-McDonald and
2-28 Guerrero-McDonald & Associates, Incorporated, may not plead an
2-29 amount in excess of that amount that may be recovered with respect
2-30 to the contract that is the subject of this resolution in all
2-31 actions brought with respect to that contract; and, be it further

2-32 RESOLVED, That the county judge of Travis County be served
2-33 process.

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