

1-1 By: Burnam (Senate Sponsor - Davis) H.C.R. No. 161
1-2 (In the Senate - Received from the House May 13, 2009;
1-3 May 14, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2009, sent to printer.)

1-6 HOUSE CONCURRENT RESOLUTION

1-7 WHEREAS, The Benbrook Water Authority, a governmental
1-8 subdivision of the State of Texas:

1-9 (1) is a party in the lawsuit *Benbrook Water Authority*
1-10 *v. Carter & Burgess, et al.*, Cause No. 352-207733-04 in Tarrant
1-11 County, Texas, in which a witness in the litigation, John Cook, has
1-12 been threatened with liability by the opposing parties to the
1-13 Benbrook Water Authority in the litigation if Mr. Cook comes
1-14 forward with factual and expert testimony in the case on behalf of
1-15 Benbrook Water Authority;

1-16 (2) in an effort to protect John Cook from any legal
1-17 liability to the opposing parties in the above-referenced
1-18 litigation, now or at any time, however remote the possibility of
1-19 liability on John Cook's part might be, wishes to hold John Cook
1-20 harmless by contractually indemnifying Mr. Cook against any claims
1-21 he may face as a consequence of his truthful testimony offered in
1-22 the cited litigation;

1-23 (3) to be certain of the enforceability of a
1-24 contractual agreement, the terms of which are disclosed below,
1-25 wishes to have its immunity from suit waived to the extent John Cook
1-26 is compelled to enforce the terms of the agreement in a court of
1-27 law; and

1-28 (4) has executed a Hold Harmless and Indemnity
1-29 Agreement between Benbrook Water Authority and John Cook, that
1-30 reads as follows:

1-31 (1) "This Indemnification Agreement is by
1-32 and between Benbrook Water Authority ("Indemnitor")
1-33 and John Cook ("Indemnified Party") and is effective
1-34 the 13th day of March, 2009.

1-35 (2) The Texas Board of Professional
1-36 Engineers Licensing Requirements for engineers who
1-37 practice engineering in the State of Texas contain the
1-38 following provision:

1-39 "§137.55 Engineers Shall Protect the Public

1-40 (a) Engineers shall be entrusted to
1-41 protect the health, safety, property and welfare of
1-42 the public in the practice of their profession. The
1-43 public as used in this section and other rules is
1-44 defined as any individual(s), client(s), business or
1-45 public entities, or any member of the general
1-46 population whose normal course of life might
1-47 reasonably include an interaction of any sort with the
1-48 engineering work on the license holder.

1-49 (b) Engineers shall not perform any
1-50 engineering function which, when measured by generally
1-51 accepted engineering standards or procedures, is
1-52 reasonably likely to result in the endangerment of
1-53 lives, health, safety, property or welfare of the
1-54 public. Any act or conduct which constitutes
1-55 incompetence or gross negligence, or a criminal
1-56 violation of law, constitutes misconduct and shall be
1-57 censurable by the board.

1-58 (c) Engineers shall first notify
1-59 involved parties of any engineering decisions or
1-60 practices that might endanger the health, safety,
1-61 property or welfare of the public. When, in an
1-62 engineer's judgment, any risk to the public remains
1-63 unresolved, that engineer shall report any fraud,
1-64 gross negligence, incompetence, misconduct, unethical

2-1 or illegal conduct to the board or to proper civil or
2-2 criminal authorities.

2-3 (d) Engineers should strive to
2-4 adequately examine the environmental impact of their
2-5 actions and projects, including the prudent use and
2-6 conservation of resources and energy, in order to make
2-7 informed recommendations and decisions."

2-8 (3) In consideration of the preceding
2-9 regulation, and of Indemnified Party's voluntary
2-10 testimony in the above cause in fulfillment of his
2-11 duties as embodied in the regulation, Indemnitor and
2-12 Indemnified Party have entered into this Agreement.

2-13 (4) Indemnitor agrees to indemnify,
2-14 defend, and hold harmless the Indemnified Party from
2-15 and against any and all claims, demands, causes of
2-16 action, damages and rights of recovery of any type or
2-17 description (collectively, the "claims"), which may be
2-18 asserted against the Indemnified Party by any person,
2-19 arising directly or indirectly from Indemnified
2-20 Party's testimony in whatever form in the above styled
2-21 and numbered cause against Carter & Burgess, Inc.
2-22 Indemnitor expressly acknowledges that the
2-23 indemnification obligation created hereby includes,
2-24 without limitation, the obligation to indemnify the
2-25 Indemnified Party with respect to claims which may
2-26 arise out of the Indemnified Party's testimony herein,
2-27 but shall not extend to claims caused by the
2-28 Indemnified Party's willful misconduct.

2-29 (5) Indemnitor and Indemnified Party
2-30 believe that, based upon allegations made in open
2-31 Court by the representatives of Carter & Burgess, Inc.
2-32 in the above styled and numbered cause to the effect
2-33 that Indemnified Party is a "disgruntled ex-employee,"
2-34 that Carter & Burgess, Inc. may choose to attempt to
2-35 sue Indemnified Party for coming forward in this cause
2-36 to effectively intimidate Indemnified Party from
2-37 testifying truthfully herein. The purpose of this
2-38 Agreement is to avoid such intimidation by Carter &
2-39 Burgess, Inc. in the ensuing weeks and months.

2-40 (6) Indemnitor hereby waives any and all
2-41 immunity from suit and immunity from liability which
2-42 may impair the enforceability of this agreement by Mr.
2-43 John Cook, his heirs or representatives.

2-44 (7) This Agreement is performable in
2-45 Tarrant County, Texas. Benbrook Water Authority";
2-46 now, therefore, be it

2-47 RESOLVED by the Legislature of the State of Texas, That Mr.
2-48 John Cook, his heirs, and representatives are, in the event a legal
2-49 dispute arises with Benbrook Water Authority over the terms of the
2-50 Hold Harmless and Indemnity Agreement entered into between Benbrook
2-51 Water Authority and John Cook effective on March 13, 2009, granted
2-52 permission to sue the Benbrook Water Authority; and, be it further

2-53 RESOLVED, That any immunity from suit that might shield the
2-54 Benbrook Water Authority is hereby waived; and, be it further

2-55 RESOLVED by the Legislature of the State of Texas, That John
2-56 Cook is granted permission to sue the Benbrook Water Authority
2-57 subject to Chapter 107, Civil Practice and Remedies Code; and, be it
2-58 further

2-59 RESOLVED, That the president of the board of directors of the
2-60 Benbrook Water Authority and the attorney general shall be served
2-61 process as provided by Section 107.002(a)(3), Civil Practice and
2-62 Remedies Code.

2-63

* * * * *