

By: Kuempel

H.B. No. 3607

A BILL TO BE ENTITLED

AN ACT

relating to construction managers-at-risk used by local governments.

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

SECTION 1. Section 271.118(c), Local Government Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-at-risk, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk ~~[unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter]~~.

SECTION 2. Subchapter H, Chapter 271, Local Government Code, is amended by adding Section 271.1181 to read as follows:

Sec. 271.1181. LIMITATION ON CONSTRUCTION MANAGER-AT-RISK

1 CONTRACTS. (a) A construction manager-at-risk contract may not be
2 awarded to:

3 (1) a governmental entity's engineer, architect,
4 construction manager-agent, or program director; or

5 (2) a sole proprietor, corporation, partnership,
6 limited liability company, or other entity that is a subsidiary,
7 parent corporation, or partner or has any other relationship in
8 which the governmental entity's engineer, architect, construction
9 manager-agent, or program director has an ownership interest, or is
10 subject to common ownership or control, or is party to an agreement
11 by which it will receive any proceeds of the construction
12 manager-at-risk's payments from the governmental entity.

13 (b) A contract awarded in violation of this section is void
14 as contrary to public policy.

15 (c) This section does not apply to:

16 (1) a public corporation in which three percent or
17 less of the outstanding stock is owned by a governmental entity's
18 architect or engineer; or

19 (2) a person who enters into a joint venture for a
20 project or contract unrelated to the current project for which a
21 construction manager-at-risk is being selected.

22 SECTION 3. This Act applies only to a contract for the
23 services of a construction manager-at-risk entered into on or after
24 the effective date of this Act. A contract entered into before the
25 effective date of this Act is governed by the law in effect when the
26 contract was entered into, and the former law is continued in effect
27 for that purpose.

1 SECTION 4. This Act takes effect September 1, 2011.