

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: J. Davis of Harris

H.B. No. 1711

A BILL TO BE ENTITLED

AN ACT

relating to disaster remediation contracts.

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

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 57 to read as follows:

CHAPTER 57. DISASTER REMEDIATION CONTRACTS

Sec. 57.001. DEFINITIONS. In this chapter:

(1) "Disaster remediation" means the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruction to that property caused by a natural disaster.

(2) "Disaster remediation contractor" means a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality for the collection, transportation, treatment, storage, processing, or disposal of solid waste.

(3) "Natural disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property related to any natural cause, including fire, flood, earthquake, wind, storm, or wave action, that results in a disaster declaration by the governor under Chapter 418, Government Code.

(4) "Person" means an individual, corporation, trust,

1 partnership, association, or other private legal entity.

2 Sec. 57.002. APPLICABILITY OF CHAPTER. (a) Except as  
3 provided by Subsection (b), this chapter applies to a contract  
4 between a person and a disaster remediation contractor for the  
5 performance of disaster remediation services on property owned or  
6 leased by the person.

7 (b) This chapter does not apply to a contract between a  
8 person and a disaster remediation contractor for the performance of  
9 disaster remediation services on property owned or leased by the  
10 person if the contractor maintains for at least one year preceding  
11 the date of the contract a physical business address in:

12 (1) the county in which the property is located; or

13 (2) a county adjacent to the county in which the  
14 property is located.

15 Sec. 57.003. DISASTER REMEDIATION CONTRACT REQUIREMENTS;  
16 CERTAIN CONDUCT PROHIBITED. (a) A contract subject to this chapter  
17 must be in writing.

18 (b) A disaster remediation contractor:

19 (1) may not require a person to make a full or partial  
20 payment under a contract before the contractor begins work;

21 (2) may not require that the amount of any partial  
22 payment under the contract exceed an amount reasonably  
23 proportionate to the work performed, including any materials  
24 delivered; and

25 (3) shall include in any contract for disaster  
26 remediation services the following statement in conspicuous,  
27 boldfaced type of at least 10 points in size: "This contract is

1 subject to Chapter 57, Business & Commerce Code. A contractor may  
2 not require a full or partial payment before the contractor begins  
3 work and may not require partial payments in an amount that exceeds  
4 an amount reasonably proportionate to the work performed, including  
5 any materials delivered."

6 Sec. 57.004. DECEPTIVE TRADE PRACTICE. A violation of this  
7 chapter by a disaster remediation contractor is a false,  
8 misleading, or deceptive act or practice as defined by Section  
9 17.46(b), and any remedy under Subchapter E, Chapter 17, is  
10 available for a violation of this chapter.

11 Sec. 57.005. WAIVER OF CHAPTER PROHIBITED. A person may not  
12 waive this chapter by contract or other means. A purported waiver  
13 of this chapter is void.

14 SECTION 2. The change in law made by this Act applies only  
15 to a contract for the performance of disaster remediation services  
16 that is entered into on or after the effective date of this Act. A  
17 contract entered into before the effective date of this Act is  
18 governed by the law in effect on the date the contract was entered  
19 into, and the former law is continued in effect for that purpose.

20 SECTION 3. This Act takes effect September 1, 2011.

FLOOR AMENDMENT NO. 1

**ADOPTED**

MAY 20 2011

BY: Jackson

1 Amend H.B. 1711 (as engrossed) <sup>*Amy Drew*</sup> by adding the following  
2 appropriately numbered ARTICLE to the bill and renumbering  
3 subsequent ARTICLES and SECTIONS of the bill accordingly:

*Secretary of the Senate*

4 ARTICLE \_\_\_\_ . FEDERAL FUNDS DESIGNATION

5 SECTION \_\_\_\_ .01. Subchapter H, Chapter 418, Government Code,  
6 is amended by adding Section 418.187 to read as follows:

7 Sec. 418.187. FEDERAL FUNDS DESIGNATION. (a) The governor  
8 shall designate an agency or agencies, under the Omnibus Budget  
9 Reconciliation Act of 1981 (Pub.L. No. 97-35) and 24 CFR, Part  
10 570, Subpart I, to administer the state's allocation of federal  
11 funds provided under the community development block grant  
12 nonentitlement program authorized by Title I of the Housing and  
13 Community Development Act of 1974 (42 U.S.C. Section 5301 et  
14 seq.).

15 (b) Notwithstanding any other provision of this Act, the  
16 Governor retains his authority to designate an agency or  
17 agencies to administer all non-entitlement federal community  
18 development block grant program funds and federal community  
19 development block grant disaster recovery funds and to transfer  
20 such federal funds to any agency.

21 SECTION \_\_\_\_ .02. The following are repealed:  
22 Subdivision 487.051(a)(6), Government Code; and  
23 Subchapter I, Chapter 487, Government Code.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 21, 2011**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1711** by Davis, John (Relating to disaster remediation contracts.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code and requires that a disaster remediation contract must be in writing and prohibits a disaster contractor from requiring payment prior to beginning work or charging a partial payment in any amount disproportionate to the work which has been performed. The bill may result in new complaints and investigations by the Office of the Attorney General's Consumer Protection and Public Health Division. However, it is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 301 Office of the Governor, 332 Department of Housing and Community Affairs, 357 Texas Department of Rural Affairs, 302 Office of the Attorney General

**LBB Staff:** JOB, AG, JM

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**May 10, 2011**

**TO:** Honorable Mike Jackson, Chair, Senate Committee on Economic Development

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1711** by Davis, John (Relating to disaster remediation contracts.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code and requires that a disaster remediation contract must be in writing and prohibits a disaster contractor from requiring payment prior to beginning work or charging a partial payment in any amount disproportionate to the work which has been performed. The bill may result in new complaints and investigations by the Office of the Attorney General's Consumer Protection and Public Health Division. However, it is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, AG, JM

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**April 8, 2011**

**TO:** Honorable John Davis, Chair, House Committee on Economic & Small Business  
Development

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE: HB1711** by Davis, John (Relating to disaster remediation contracts.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code and requires that a disaster remediation contract must be in writing and prohibits a disaster contractor from requiring payment prior to beginning work or charging a partial payment in any amount disproportionate to the work which has been performed. The bill may result in new complaints and investigations by the Office of the Attorney General's Consumer Protection and Public Health Division. However, it is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, AG, JM

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION**

**March 28, 2011**

**TO:** Honorable John Davis, Chair, House Committee on Economic & Small Business  
Development

**FROM:** John S O'Brien, Director, Legislative Budget Board

**IN RE:** HB1711 by Davis, John (Relating to disaster remediation contracts; providing penalties.), As  
Introduced

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Business and Commerce Code and requires that a disaster remediation contract must be in writing and prohibits a disaster contractor from requiring payment prior to beginning work or charging a partial payment in any amount disproportionate to the work which has been performed. The bill may result in new complaints and investigations by the Office of the Attorney General's Consumer Protection and Public Health Division. However, it is anticipated that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General

**LBB Staff:** JOB, AG, JM