

## **BILL ANALYSIS**

Senate Research Center  
83R29147 CAE-D

C.S.H.B. 3511  
By: Ritter (Elife)  
Natural Resources  
5/15/2013  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently there is no remedy if a local governmental entity breaches a contract regarding the sale or delivery of reclaimed water intended for industrial use. C.S.H.B. 3511 allows for adjudication of a claim for breach of contract by a local governmental entity regarding the sale or delivery of reclaimed water intended for industrial use.

C.S.H.B. 3511 amends current law relating to the adjudication of certain claims under a written contract with a special-purpose district or authority or local government entity.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 113, as follows:

#### **CHAPTER 113. WATER SUPPLY CONTRACT CLAIM AGAINST LOCAL DISTRICT OR AUTHORITY**

Sec. 113.001. DEFINITIONS. Defines, in this chapter, “adjudicating a claim” and “local district or authority.”

Sec. 113.002. WAIVER OF IMMUNITY TO SUIT FOR CLAIM REGARDING WATER SUPPLY CONTRACT. Provides that a local district or authority that enters into a written contract stating the essential terms under which the local district or authority is to provide water to a purchaser for use in connection with the generation of electricity waives sovereign immunity to suit for the purpose of adjudicating a claim that the local district or authority breached the contract by not providing water, or access to water, according to the contract’s terms.

Sec. 113.003. REMEDIES. (a) Authorizes remedies awarded in a proceeding adjudicating a claim under this chapter, except as provided by Subsection (b), to include any remedy available for breach of contract that is not inconsistent with the terms of the contract, including the cost of cover and specific performance.

(b) Prohibits remedies awarded in a proceeding adjudicating a claim under this chapter from including consequential or exemplary damages.

Sec. 113.004. NO WAIVER OF OTHER DEFENSES. Provides that this chapter does not waive a defense or a limitation on damages available to a party to a contract other than sovereign immunity to suit.

Sec. 113.005. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. Provides that this chapter does not waive sovereign immunity to suit in federal court.

Sec. 113.006. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. Provides that this chapter does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort.

Sec. 113.007. NO NEW OR ADDITIONAL WATER RIGHTS. Provides that this chapter does not grant any user of water any new or additional rights to water or any new or additional priority to water rights. Provides that this chapter does not confer any rights inconsistent with the terms of the contract that is the subject of a dispute under Section 113.002.

Sec. 113.008. AUTHORITY OF REGULATORY AGENCIES; COMPLIANCE WITH REGULATORY ORDER. (a) Provides that this chapter does not limit the authority of the Texas Commission on Environmental Quality (TCEQ) or any other state regulatory agency.

(b) Provides that compliance with an order of TCEQ or any other state regulatory agency that expressly curtails water delivery to a specific electric generating facility is not considered a breach of contract for the purposes of this chapter.

Sec. 113.009. NO THIRD-PARTY BENEFICIARIES. (a) Provides that this chapter waives sovereign immunity only for the benefit of:

(1) a party to the contract that is the subject of a dispute under Section 113.002; or

(2) the assignee of a party to the contract, if assignment of an interest in the contract is permitted by the terms of the contract.

(b) Prohibits a party authorized by this chapter to sue for a cause of action of breach of contract, except for an assignment described by Subsection (a)(2), from transferring or assigning that cause of action to any person.

SECTION 2. Amends Section 271.151(2), Local Government Code, as follows:

(2) Redefines “contract subject to this subchapter” to mean:

(A) Creates this paragraph from existing text and makes nonsubstantive changes; or

(B) a written contract, including a right of first refusal, regarding the sale or delivery of not less than 1,000 acre-feet of reclaimed water by a local governmental entity intended for industrial use.

SECTION 3. Amends Section 271.153, Local Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that, except as provided by Subsection (c), the total amount of money awarded in an adjudication brought against a local governmental entity for breach of a contract subject to this subchapter is limited to certain fees and compensations.

(c) Authorizes actual damages, specific performance, or injunctive relief to be granted in an adjudication brought against a local governmental entity for breach of a contract described by Section 271.151(2)(B).

SECTION 4. (a) Provides that Chapter 113, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. Provides that a cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(b) Provides that Chapter 113, Civil Practice and Remedies Code, as added by this Act, does not waive sovereign immunity to suit for any claims related to or arising out of a contract that was the subject of litigation that was adjudicated or dismissed on the basis of sovereign immunity prior to the effective date of this Act.

(c) Provides that Sections 271.151(2) and 271.153, Local Government Code, as amended by this Act, apply to a claim that arises under a contract executed on or after the effective date of this Act. Provides that a claim that arises under a contract executed before the effective date of this Act is governed by the law in effect on the date the contract was executed, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: upon passage or September 1, 2013.