

1 AN ACT

2 relating to the adjudication of certain claims under a written
3 contract with a special-purpose district or authority or local
4 governmental entity.

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

6 SECTION 1. Title 5, Civil Practice and Remedies Code, is
7 amended by adding Chapter 113 to read as follows:

8 CHAPTER 113. WATER SUPPLY CONTRACT CLAIM AGAINST LOCAL DISTRICT
9 OR AUTHORITY

10 Sec. 113.001. DEFINITIONS. In this chapter:

11 (1) "Adjudicating a claim" means the bringing of a
12 civil suit and prosecution to final judgment in court and includes
13 the bringing of an authorized arbitration proceeding and
14 prosecution to final resolution in accordance with any mandatory
15 procedures established in the contract that is the subject of the
16 dispute under Section 113.002.

17 (2) "Local district or authority" means a
18 special-purpose district or authority, including a levee
19 improvement district, drainage district, irrigation district,
20 water improvement district, water control and improvement
21 district, water control and preservation district, fresh water
22 supply district, navigation district, special utility district,
23 and river authority, and any conservation and reclamation district.

24 Sec. 113.002. WAIVER OF IMMUNITY TO SUIT FOR CLAIM

1 REGARDING WATER SUPPLY CONTRACT. A local district or authority
2 that enters into a written contract stating the essential terms
3 under which the local district or authority is to provide water to a
4 purchaser for use in connection with the generation of electricity
5 waives sovereign immunity to suit for the purpose of adjudicating a
6 claim that the local district or authority breached the contract by
7 not providing water, or access to water, according to the
8 contract's terms.

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

14 (b) Remedies awarded in a proceeding adjudicating a claim
15 under this chapter may not include consequential or exemplary
16 damages.

17 Sec. 113.004. NO WAIVER OF OTHER DEFENSES. This chapter
18 does not waive a defense or a limitation on damages available to a
19 party to a contract other than sovereign immunity to suit.

20 Sec. 113.005. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL
21 COURT. This chapter does not waive sovereign immunity to suit in
22 federal court.

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

26 Sec. 113.007. NO NEW OR ADDITIONAL WATER RIGHTS. This
27 chapter does not grant any user of water any new or additional

1 rights to water or any new or additional priority to water rights.
2 This chapter does not confer any rights inconsistent with the terms
3 of the contract that is the subject of a dispute under Section
4 113.002.

5 Sec. 113.008. AUTHORITY OF REGULATORY AGENCIES; COMPLIANCE
6 WITH REGULATORY ORDER. (a) This chapter does not limit the
7 authority of the Texas Commission on Environmental Quality or any
8 other state regulatory agency.

9 (b) Compliance with an order of the Texas Commission on
10 Environmental Quality or any other state regulatory agency that
11 expressly curtails water delivery to a specific electric generating
12 facility is not considered a breach of contract for the purposes of
13 this chapter.

14 Sec. 113.009. NO THIRD-PARTY BENEFICIARIES. (a) This
15 chapter waives sovereign immunity only for the benefit of:

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

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

21 (b) Except for an assignment described by Subsection
22 (a)(2), a party authorized by this chapter to sue for a cause of
23 action of breach of contract may not transfer or assign that cause
24 of action to any person.

25 SECTION 2. Section 271.151(2), Local Government Code, is
26 amended to read as follows:

27 (2) "Contract subject to this subchapter" means:

1 (A) a written contract stating the essential
2 terms of the agreement for providing goods or services to the local
3 governmental entity that is properly executed on behalf of the
4 local governmental entity; or

5 (B) a written contract, including a right of
6 first refusal, regarding the sale or delivery of not less than
7 1,000 acre-feet of reclaimed water by a local governmental entity
8 intended for industrial use.

9 SECTION 3. Section 271.153, Local Government Code, is
10 amended by amending Subsection (a) and adding Subsection (c) to
11 read as follows:

12 (a) Except as provided by Subsection (c), the ~~[The]~~ total
13 amount of money awarded in an adjudication brought against a local
14 governmental entity for breach of a contract subject to this
15 subchapter is limited to the following:

16 (1) the balance due and owed by the local governmental
17 entity under the contract as it may have been amended, including any
18 amount owed as compensation for the increased cost to perform the
19 work as a direct result of owner-caused delays or acceleration;

20 (2) the amount owed for change orders or additional
21 work the contractor is directed to perform by a local governmental
22 entity in connection with the contract;

23 (3) reasonable and necessary attorney's fees that are
24 equitable and just; and

25 (4) interest as allowed by law, including interest as
26 calculated under Chapter 2251, Government Code.

27 (c) Actual damages, specific performance, or injunctive

1 relief may be granted in an adjudication brought against a local
2 governmental entity for breach of a contract described by Section
3 271.151(2)(B).

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

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

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

22 SECTION 5. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 3511 was passed by the House on May 2, 2013, by the following vote: Yeas 147, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3511 on May 24, 2013, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3511 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor