

1-1 By: Ritter (Senate Sponsor - Eltife) H.B. No. 3511
 1-2 (In the Senate - Received from the House May 6, 2013;
 1-3 May 8, 2013, read first time and referred to Committee on Natural
 1-4 Resources; May 17, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 11, Nays 0;
 1-6 May 17, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR H.B. No. 3511 By: Eltife

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the adjudication of certain claims under a written
 1-24 contract with a special-purpose district or authority or local
 1-25 governmental entity.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Title 5, Civil Practice and Remedies Code, is
 1-28 amended by adding Chapter 113 to read as follows:

1-29 CHAPTER 113. WATER SUPPLY CONTRACT CLAIM AGAINST LOCAL DISTRICT
 1-30 OR AUTHORITY

1-31 Sec. 113.001. DEFINITIONS. In this chapter:

1-32 (1) "Adjudicating a claim" means the bringing of a
 1-33 civil suit and prosecution to final judgment in court and includes
 1-34 the bringing of an authorized arbitration proceeding and
 1-35 prosecution to final resolution in accordance with any mandatory
 1-36 procedures established in the contract that is the subject of the
 1-37 dispute under Section 113.002.

1-38 (2) "Local district or authority" means a
 1-39 special-purpose district or authority, including a levee
 1-40 improvement district, drainage district, irrigation district,
 1-41 water improvement district, water control and improvement
 1-42 district, water control and preservation district, fresh water
 1-43 supply district, navigation district, special utility district,
 1-44 and river authority, and any conservation and reclamation district.

1-45 Sec. 113.002. WAIVER OF IMMUNITY TO SUIT FOR CLAIM
 1-46 REGARDING WATER SUPPLY CONTRACT. A local district or authority
 1-47 that enters into a written contract stating the essential terms
 1-48 under which the local district or authority is to provide water to a
 1-49 purchaser for use in connection with the generation of electricity
 1-50 waives sovereign immunity to suit for the purpose of adjudicating a
 1-51 claim that the local district or authority breached the contract by
 1-52 not providing water, or access to water, according to the
 1-53 contract's terms.

1-54 Sec. 113.003. REMEDIES. (a) Except as provided by
 1-55 Subsection (b), remedies awarded in a proceeding adjudicating a
 1-56 claim under this chapter may include any remedy available for
 1-57 breach of contract that is not inconsistent with the terms of the
 1-58 contract, including the cost of cover and specific performance.

1-59 (b) Remedies awarded in a proceeding adjudicating a claim
 1-60 under this chapter may not include consequential or exemplary

2-1 damages.

2-2 Sec. 113.004. NO WAIVER OF OTHER DEFENSES. This chapter
 2-3 does not waive a defense or a limitation on damages available to a
 2-4 party to a contract other than sovereign immunity to suit.

2-5 Sec. 113.005. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL
 2-6 COURT. This chapter does not waive sovereign immunity to suit in
 2-7 federal court.

2-8 Sec. 113.006. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
 2-9 LIABILITY. This chapter does not waive sovereign immunity to suit
 2-10 for a cause of action for a negligent or intentional tort.

2-11 Sec. 113.007. NO NEW OR ADDITIONAL WATER RIGHTS. This
 2-12 chapter does not grant any user of water any new or additional
 2-13 rights to water or any new or additional priority to water rights.
 2-14 This chapter does not confer any rights inconsistent with the terms
 2-15 of the contract that is the subject of a dispute under Section
 2-16 113.002.

2-17 Sec. 113.008. AUTHORITY OF REGULATORY AGENCIES; COMPLIANCE
 2-18 WITH REGULATORY ORDER. (a) This chapter does not limit the
 2-19 authority of the Texas Commission on Environmental Quality or any
 2-20 other state regulatory agency.

2-21 (b) Compliance with an order of the Texas Commission on
 2-22 Environmental Quality or any other state regulatory agency that
 2-23 expressly curtails water delivery to a specific electric generating
 2-24 facility is not considered a breach of contract for the purposes of
 2-25 this chapter.

2-26 Sec. 113.009. NO THIRD-PARTY BENEFICIARIES. (a) This
 2-27 chapter waives sovereign immunity only for the benefit of:

2-28 (1) a party to the contract that is the subject of a
 2-29 dispute under Section 113.002; or

2-30 (2) the assignee of a party to the contract, if
 2-31 assignment of an interest in the contract is permitted by the terms
 2-32 of the contract.

2-33 (b) Except for an assignment described by Subsection
 2-34 (a)(2), a party authorized by this chapter to sue for a cause of
 2-35 action of breach of contract may not transfer or assign that cause
 2-36 of action to any person.

2-37 SECTION 2. Section 271.151(2), Local Government Code, is
 2-38 amended to read as follows:

2-39 (2) "Contract subject to this subchapter" means:

2-40 (A) a written contract stating the essential
 2-41 terms of the agreement for providing goods or services to the local
 2-42 governmental entity that is properly executed on behalf of the
 2-43 local governmental entity; or

2-44 (B) a written contract, including a right of
 2-45 first refusal, regarding the sale or delivery of not less than
 2-46 1,000 acre-feet of reclaimed water by a local governmental entity
 2-47 intended for industrial use.

2-48 SECTION 3. Section 271.153, Local Government Code, is
 2-49 amended by amending Subsection (a) and adding Subsection (c) to
 2-50 read as follows:

2-51 (a) Except as provided by Subsection (c), the ~~The~~ total
 2-52 amount of money awarded in an adjudication brought against a local
 2-53 governmental entity for breach of a contract subject to this
 2-54 subchapter is limited to the following:

2-55 (1) the balance due and owed by the local governmental
 2-56 entity under the contract as it may have been amended, including any
 2-57 amount owed as compensation for the increased cost to perform the
 2-58 work as a direct result of owner-caused delays or acceleration;

2-59 (2) the amount owed for change orders or additional
 2-60 work the contractor is directed to perform by a local governmental
 2-61 entity in connection with the contract;

2-62 (3) reasonable and necessary attorney's fees that are
 2-63 equitable and just; and

2-64 (4) interest as allowed by law, including interest as
 2-65 calculated under Chapter 2251, Government Code.

2-66 (c) Actual damages, specific performance, or injunctive
 2-67 relief may be granted in an adjudication brought against a local
 2-68 governmental entity for breach of a contract described by Section
 2-69 271.151(2)(B).

3-1 SECTION 4. (a) Chapter 113, Civil Practice and Remedies
3-2 Code, as added by this Act, applies only to a cause of action that
3-3 accrues on or after the effective date of this Act. A cause of
3-4 action that accrues before the effective date of this Act is
3-5 governed by the law in effect immediately before that date, and that
3-6 law is continued in effect for that purpose.

3-7 (b) Chapter 113, Civil Practice and Remedies Code, as added
3-8 by this Act, does not waive sovereign immunity to suit for any
3-9 claims related to or arising out of a contract that was the subject
3-10 of litigation that was adjudicated or dismissed on the basis of
3-11 sovereign immunity prior to the effective date of this Act.

3-12 (c) Sections 271.151(2) and 271.153, Local Government Code,
3-13 as amended by this Act, apply to a claim that arises under a
3-14 contract executed on or after the effective date of this Act. A
3-15 claim that arises under a contract executed before the effective
3-16 date of this Act is governed by the law in effect on the date the
3-17 contract was executed, and the former law is continued in effect for
3-18 that purpose.

3-19 SECTION 5. This Act takes effect immediately if it receives
3-20 a vote of two-thirds of all the members elected to each house, as
3-21 provided by Section 39, Article III, Texas Constitution. If this
3-22 Act does not receive the vote necessary for immediate effect, this
3-23 Act takes effect September 1, 2013.

3-24

* * * * *