

By: Fraser

S.B. No. 958

A BILL TO BE ENTITLED

AN ACT

relating to the liability of certain special-purpose districts or authorities providing water to a purchaser for the generation of electricity.

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

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

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

Sec. 113.001. DEFINITIONS. In this chapter:

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

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

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. (a) The change in law made by this Act applies
26 only to a cause of action that accrues on or after the effective
27 date of this Act. A cause of action that accrues before the

1 effective date of this Act is governed by the law in effect
2 immediately before that date, and that law is continued in effect
3 for that purpose.

4 (b) The change in law made by this Act does not waive
5 sovereign immunity to suit for any claims related to or arising out
6 of a contract that was the subject of litigation that was
7 adjudicated or dismissed on the basis of sovereign immunity prior
8 to the effective date of this Act.

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