

1-1 By: Fraser S.B. No. 958
 1-2 (In the Senate - Filed February 28, 2013; March 12, 2013,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 April 9, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 9, 2013,
 1-6 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 COMMITTEE SUBSTITUTE FOR S.B. No. 958 By: Fraser

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the liability of certain special-purpose districts or
 1-22 authorities providing water to a purchaser for the generation of
 1-23 electricity.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Title 5, Civil Practice and Remedies Code, is
 1-26 amended by adding Chapter 113 to read as follows:

1-27 CHAPTER 113. WATER SUPPLY CONTRACT CLAIM AGAINST LOCAL DISTRICT OR
 1-28 AUTHORITY

1-29 Sec. 113.001. DEFINITIONS. In this chapter:

1-30 (1) "Adjudicating a claim" means the bringing of a
 1-31 civil suit and prosecution to final judgment in court and includes
 1-32 the bringing of an authorized arbitration proceeding and
 1-33 prosecution to final resolution in accordance with any mandatory
 1-34 procedures established in the contract that is the subject of the
 1-35 dispute under Section 113.002.

1-36 (2) "Local district or authority" means a
 1-37 special-purpose district or authority, including a levee
 1-38 improvement district, drainage district, irrigation district,
 1-39 water improvement district, water control and improvement
 1-40 district, water control and preservation district, fresh water
 1-41 supply district, navigation district, special utility district,
 1-42 and river authority, and any conservation and reclamation district.

1-43 Sec. 113.002. WAIVER OF IMMUNITY TO SUIT FOR CLAIM
 1-44 REGARDING WATER SUPPLY CONTRACT. A local district or authority
 1-45 that enters into a written contract stating the essential terms
 1-46 under which the local district or authority is to provide water to a
 1-47 purchaser for use in connection with the generation of electricity
 1-48 waives sovereign immunity to suit for the purpose of adjudicating a
 1-49 claim that the local district or authority breached the contract by
 1-50 not providing water, or access to water, according to the
 1-51 contract's terms.

1-52 Sec. 113.003. REMEDIES. (a) Except as provided by
 1-53 Subsection (b), remedies awarded in a proceeding adjudicating a
 1-54 claim under this chapter may include any remedy available for
 1-55 breach of contract that is not inconsistent with the terms of the
 1-56 contract, including the cost of cover and specific performance.

1-57 (b) Remedies awarded in a proceeding adjudicating a claim
 1-58 under this chapter may not include consequential or exemplary
 1-59 damages.

1-60 Sec. 113.004. NO WAIVER OF OTHER DEFENSES. This chapter

2-1 does not waive a defense or a limitation on damages available to a
2-2 party to a contract other than sovereign immunity to suit.

2-3 Sec. 113.005. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL
2-4 COURT. This chapter does not waive sovereign immunity to suit in
2-5 federal court.

2-6 Sec. 113.006. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
2-7 LIABILITY. This chapter does not waive sovereign immunity to suit
2-8 for a cause of action for a negligent or intentional tort.

2-9 Sec. 113.007. NO NEW OR ADDITIONAL WATER RIGHTS. This
2-10 chapter does not grant any user of water any new or additional
2-11 rights to water or any new or additional priority to water rights.
2-12 This chapter does not confer any rights inconsistent with the terms
2-13 of the contract that is the subject of a dispute under Section
2-14 113.002.

2-15 Sec. 113.008. AUTHORITY OF REGULATORY AGENCIES; COMPLIANCE
2-16 WITH REGULATORY ORDER. (a) This chapter does not limit the
2-17 authority of the Texas Commission on Environmental Quality or any
2-18 other state regulatory agency.

2-19 (b) Compliance with an order of the Texas Commission on
2-20 Environmental Quality or any other state regulatory agency that
2-21 expressly curtails water delivery to a specific electric generating
2-22 facility is not considered a breach of contract for the purposes of
2-23 this chapter.

2-24 Sec. 113.009. NO THIRD-PARTY BENEFICIARIES. (a) This
2-25 chapter waives sovereign immunity only for the benefit of:

2-26 (1) a party to the contract that is the subject of a
2-27 dispute under Section 113.002; or

2-28 (2) the assignee of a party to the contract, if
2-29 assignment of an interest in the contract is permitted by the terms
2-30 of the contract.

2-31 (b) Except for an assignment described by Subsection
2-32 (a)(2), a party authorized by this chapter to sue for a cause of
2-33 action of breach of contract may not transfer or assign that cause
2-34 of action to any person.

2-35 SECTION 2. (a) The change in law made by this Act applies
2-36 only to a cause of action that accrues on or after the effective
2-37 date of this Act. A cause of action that accrues before the
2-38 effective date of this Act is governed by the law in effect
2-39 immediately before that date, and that law is continued in effect
2-40 for that purpose.

2-41 (b) The change in law made by this Act does not waive
2-42 sovereign immunity to suit for any claims related to or arising out
2-43 of a contract that was the subject of litigation that was
2-44 adjudicated or dismissed on the basis of sovereign immunity prior
2-45 to the effective date of this Act.

2-46 SECTION 3. This Act takes effect immediately if it receives
2-47 a vote of two-thirds of all the members elected to each house, as
2-48 provided by Section 39, Article III, Texas Constitution. If this
2-49 Act does not receive the vote necessary for immediate effect, this
2-50 Act takes effect September 1, 2013.

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