

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Ritter

H.B. No. 3511

A BILL TO BE ENTITLED

AN ACT

relating to the adjudication of claims arising under certain written contracts with local governmental entities.

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

SECTION 1. Section 271.151(2), Local Government Code, is amended to read as follows:

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

(A) a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity; 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 2. Section 271.153, Local Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as provided by Subsection (c), the ~~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 the following:

(1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any

1 amount owed as compensation for the increased cost to perform the  
2 work as a direct result of owner-caused delays or acceleration;

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

6 (3) reasonable and necessary attorney's fees that are  
7 equitable and just; and

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

10 (c) Actual damages, specific performance, or injunctive  
11 relief may be granted in an adjudication brought against a local  
12 governmental entity for breach of a contract described by Section  
13 271.151(2)(B).

14 SECTION 3. The changes in law made by this Act apply to a  
15 claim that arises under a contract executed on or after the  
16 effective date of this Act. A claim that arises under a contract  
17 executed before the effective date of this Act is governed by the  
18 law in effect on the date the contract was executed, and the former  
19 law is continued in effect for that purpose.

20 SECTION 4. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September 1, 2013.

**ADOPTED**

MAY 22 2013

*Atty Gen*  
Secretary of the Senate

By: ELTIFE

H.B. No. 3511

Substitute the following for H.B. No. 3511:

By: 

C.S. H.B. No. 3511

A BILL TO BE ENTITLED

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.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 23, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3511** by Ritter (Relating to the adjudication of certain claims under a written contract with a special-purpose district or authority or local governmental entity. ), **As Passed 2nd House**

<b>No fiscal implication to the State is anticipated.</b>
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The bill would add Chapter 113 to the Civil Practice and Remedies Code would establish requirements regarding the adjudication of certain claims under a written contract with a special-purpose district or authority or local governmental entity. The bill would define "adjudicating a claim" and "local district or authority." The chapter would not limit the authority of the Texas Commission on Environmental Quality (TCEQ) or any other state regulatory agency as defined by the provisions of the bill.

The bill would amend Chapter 271 of the Local Government Code to provide that remedies may include actual damages, specific performance or injunctive relief for a breach of 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.

The Texas Education Agency (TEA) indicated the bill would have no direct fiscal implications for the Foundation School Program or the operations of the TEA. The Texas Higher Education Coordinating Board indicated no fiscal impact is anticipated. TCEQ indicated the provisions of the bill would not require any change in policy, procedure or rule; and no fiscal impact on the agency is anticipated.

#### **Local Government Impact**

A local governmental entity could incur legal expenses if a written contract regarding the sale or delivery of reclaimed water for industrial use is adjudicated which could result in remedies for actual damages, specific performance or injunctive relief; however, the amounts would vary depending on the terms and costs of the contract.

TEA indicated that school districts are unlikely to enter into contracts for reclaimed water for industrial use; therefore, no direct fiscal impact is anticipated.

The San Antonio River Authority (SARA) indicated that certain provisions of the bill would not impact SARA. SARA operates several wastewater treatment plants that provide reclaimed water, but there is not enough to meet an industrial contract of 1000 acre-feet or more; SARA's reclaim



contracts are currently not with industrial users and for less water than 1000 acre-feet and does not anticipate this changing in the foreseeable future based upon plant locations and the size of the communities that are served.

**Source Agencies:** 582 Commission on Environmental Quality, 701 Central Education Agency, 781 Higher Education Coordinating Board, 592 Soil and Water Conservation Board

**LBB Staff:** UP, SD, SZ, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 15, 2013**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3511** by Ritter (Relating to the adjudication of certain claims under a written contract with a special-purpose district or authority or local governmental entity.), **Committee Report 2nd House, Substituted**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill would add Chapter 113 to the Civil Practice and Remedies Code would establish requirements regarding the adjudication of certain claims under a written contract with a special-purpose district or authority or local governmental entity. The bill would define "adjudicating a claim" and "local district or authority." The chapter would not limit the authority of the Texas Commission on Environmental Quality (TCEQ) or any other state regulatory agency as defined by the provisions of the bill.

The bill would amend Chapter 271 of the Local Government Code to provide that remedies may include actual damages, specific performance or injunctive relief for a breach of 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.

The Texas Education Agency (TEA) indicated the bill would have no direct fiscal implications for the Foundation School Program or the operations of the TEA. The Texas Higher Education Coordinating Board indicated no fiscal impact is anticipated. TCEQ indicated the provisions of the bill would not require any change in policy, procedure or rule; and no fiscal impact on the agency is anticipated.

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TEA indicated that school districts are unlikely to enter into contracts for reclaimed water for industrial use; therefore, no direct fiscal impact is anticipated.

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contracts are currently not with industrial users and for less water than 1000 acre-feet and does not anticipate this changing in the foreseeable future based upon plant locations and the size of the communities that are served.

**Source Agencies:** 582 Commission on Environmental Quality, 701 Central Education Agency, 781 Higher Education Coordinating Board, 592 Soil and Water Conservation Board

**LBB Staff:** UP, SZ, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 13, 2013**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3511** by Ritter (Relating to the adjudication of claims arising under certain written contracts with local governmental entities.), **As Engrossed**

<b>No fiscal implication to the State is anticipated.</b>
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The bill would amend Chapter 271 of the Local Government Code to provide that remedies may include actual damages, specific performance or injunctive relief for a breach of 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.

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**Source Agencies:** 701 Central Education Agency, 781 Higher Education Coordinating Board, 592 Soil and Water Conservation Board

**LBB Staff:** UP, SZ, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 24, 2013**

**TO:** Honorable Allan Ritter, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3511** by Ritter (Relating to the adjudication of claims arising under certain written contracts with local governmental entities.), **Committee Report 1st House, Substituted**

<p><b>No fiscal implication to the State is anticipated.</b></p>
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The bill would amend Chapter 271 of the Local Government Code to provide that remedies may include actual damages, specific performance or injunctive relief for a breach of 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.

The Texas Education Agency (TEA) indicated the bill would have no direct fiscal implications for the Foundation School Program or the operations of the TEA. The Texas Higher Education Coordinating Board indicated no fiscal impact is anticipated.

**Local Government Impact**

A local governmental entity could incur legal expenses if a written contract regarding the sale or delivery of reclaimed water for industrial use is adjudicated which could result in remedies for actual damages, specific performance or injunctive relief; however, the amounts would vary depending on the terms and costs of the contract.

TEA indicated that school districts are unlikely to enter into contracts for reclaimed water for industrial use; therefore, no direct fiscal impact is anticipated.

The San Antonio River Authority (SARA) indicated that the provisions of the bill would not impact SARA. SARA operates several wastewater treatment plants that provide reclaimed water, but there is not enough to meet an industrial contract of 1000 acre-feet or more; SARA's reclaim contracts are currently not with industrial users and for less water than 1000 acre-feet and does not anticipate this changing in the foreseeable future based upon plant locations and the size of the communities that are served.

**Source Agencies:** 701 Central Education Agency, 781 Higher Education Coordinating Board, 592 Soil and Water Conservation Board

**LBB Staff:** UP, SZ, TP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 13, 2013**

**TO:** Honorable Allan Ritter, Chair, House Committee on Natural Resources

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB3511** by Ritter (Relating to adjudication of claims under water contracts with local government entities.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill would amend Chapter 271 of the Local Government Code to provide that remedies may include specific performance or injunctive relief or both for 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 intended for industrial use.

The Texas Education Agency (TEA) indicated the bill would have no direct fiscal implications for the Foundation School Program or the operations of the TEA. The Texas Higher Education Coordinating Board indicated no fiscal impact is anticipated.

**Local Government Impact**

A local governmental entity could incur legal expenses if a written contract regarding the sale or delivery of reclaimed water for industrial use is adjudicated which could result in remedies for specific performance or injunctive relief or both; however, the amounts would vary depending on the terms and costs of the contract.

TEA indicated that school districts are unlikely to enter into contracts for reclaimed water for industrial use; therefore, no direct fiscal impact is anticipated.

The San Antonio River Authority (SARA) indicated that the provisions of the bill would not impact SARA. SARA operates several wastewater treatment plants that provide reclaimed water, but there is not enough to meet an industrial contract of 1000 acre-feet or more; SARA's reclaim contracts are currently not with industrial users and for less water than 1000 acre-feet and does not anticipate this changing in the foreseeable future based upon plant locations and the size of the communities that are served.

**Source Agencies:** 592 Soil and Water Conservation Board, 701 Central Education Agency,  
781 Higher Education Coordinating Board

**LBB Staff:** UP, SZ, TP