

House Bill 3511
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

No equivalent provision.

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

Sec. 113.003. REMEDIES. (a) Except as provided by Subsection (b), remedies awarded in a proceeding adjudicating a claim under this chapter may include any remedy available for breach of contract that is not inconsistent

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with the terms of the contract, including the cost of cover and specific performance.

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

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

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

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

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

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

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

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Sec. 113.009. NO THIRD-PARTY BENEFICIARIES. (a) This chapter waives sovereign immunity only for the benefit of:
(1) a party to the contract that is the subject of a dispute under Section 113.002; or
(2) the assignee of a party to the contract, if assignment of an interest in the contract is permitted by the terms of the contract.
(b) Except for an assignment described by Subsection (a)(2), a party authorized by this chapter to sue for a cause of action of breach of contract may not transfer or assign that cause of action to any person.

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. Same as House version.

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

SECTION 3. Same as House version.

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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 amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
 - (2) the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;
 - (3) reasonable and necessary attorney's fees that are equitable and just; and
 - (4) interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.
- (c) Actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a local governmental entity for breach of a contract described by Section 271.151(2)(B).

SECTION 3.

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

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

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

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

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

SECTION 5. Same as House version.

CONFERENCE