

SENATE AMENDMENTS

2nd Printing

By: Morrison

H.B. No. 2856

A BILL TO BE ENTITLED

1 AN ACT
2 relating to restrictions under disaster remediation contracts;
3 creating a criminal offense.

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

5 SECTION 1. Sections 58.001(1) and (2), Business & Commerce
6 Code, are amended to read as follows:

7 (1) "Disaster remediation" means the removal,
8 cleaning, sanitizing, demolition, reconstruction, or other
9 treatment of existing improvements to real property performed
10 because of damage or destruction to that property caused by a
11 natural disaster.

12 (2) "Disaster remediation contractor" means a person
13 who engages in disaster remediation for compensation, other than a
14 person who has a permit, license, registration, or other
15 authorization from the Texas Commission on Environmental Quality
16 for the collection, transportation, treatment, storage,
17 processing, or disposal of solid waste, but does not include an
18 entity approved by the Internal Revenue Service as tax exempt under
19 Section 501(c)(3), Internal Revenue Code of 1986.

20 SECTION 2. Section 58.003(b), Business & Commerce Code, is
21 amended to read as follows:

22 (b) A disaster remediation contractor:

23 (1) may not require a person to make a full or partial
24 payment under a contract before the contractor begins work, unless

1 the amount of such payment is held in escrow;

2 (2) may not require that the amount of any partial
3 payment under the contract exceed an amount reasonably
4 proportionate to the work performed, including any materials
5 delivered; and

6 (3) shall include in any contract for disaster
7 remediation services the following statement in conspicuous,
8 boldfaced type of at least 10 points in size: "This contract is
9 subject to Chapter 58, Business & Commerce Code. A contractor may
10 not require a full or partial payment before the contractor begins
11 work and may not require partial payments in an amount that exceeds
12 an amount reasonably proportionate to the work performed, including
13 any materials delivered."

14 SECTION 3. Section 58.004, Business & Commerce Code, is
15 amended to read as follows:

16 Sec. 58.004. PENALTIES [~~DECEPTIVE TRADE PRACTICE~~]. (a) A
17 violation of this chapter by a disaster remediation contractor is a
18 false, misleading, or deceptive act or practice as defined by
19 Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is
20 available for a violation of this chapter.

21 (b) A disaster remediation contractor who violates Section
22 58.003(b)(1) or (2) commits an offense. An offense under this
23 section is:

24 (1) a Class B misdemeanor if the offense was committed
25 without the intent to defraud the person contracting for disaster
26 remediation services; or

27 (2) a felony of the third degree if the offense was

1 committed with the intent to defraud the person contracting for
2 disaster remediation services.

3 (c) It is a defense to prosecution under this section if the
4 disaster remediation contractor refunds any payment made in
5 violation of Section 58.003(b)(1) or (2) not later than the 15th day
6 following the receipt of a written demand alleging a violation of
7 Section 58.003(b)(1) or (2) sent by certified mail to the disaster
8 remediation contractor's last known business address or the address
9 of the disaster remediation contractor's registered agent.

10 SECTION 4. The changes in law made by this Act apply only to
11 a disaster remediation contract entered into on or after the
12 effective date of this Act. A disaster remediation contract
13 entered into before the effective date of this Act is governed by
14 the law in effect when the contract was entered into, and the former
15 law is continued in effect for that purpose.

16 SECTION 5. This Act takes effect September 1, 2019.

ADOPTED

MAY 22 2019

Leta Paul
Secretary of the Senate

By: *L. W. Kolbe*

H.B. No. 2856

Substitute the following for ___B. No. _____:

By: *Robert Lee Nichols*

C.S. H.B. No. 2856

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1 Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is
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3 (b) A disaster remediation contractor who violates Section
4 58.003(b)(1) or (2) commits an offense. An offense under this
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19 SECTION 3. The changes in law made by this Act apply only to
20 a disaster remediation contract entered into on or after the
21 effective date of this Act. A disaster remediation contract
22 entered into before the effective date of this Act is governed by
23 the law in effect when the contract was entered into, and the former
24 law is continued in effect for that purpose.

25 SECTION 4. This Act takes effect September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 22, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business & Commerce Code relating to restrictions under disaster remediation contracts; creating a criminal offense. Based on information provided by the Texas Department of Licensing & Regulation, Office of the Attorney General, and the Texas Commission on Environmental Quality, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect on September 1, 2019.

Local Government Impact

A Class B misdemeanor is punishable by a fine of not more than \$2,000, confinement in jail for a term not to exceed 180 days, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 582 Commission on Environmental Quality

LBB Staff: WP, SD, DFR, CLo, SGr, AF

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 18, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB2856** by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business & Commerce Code relating to restrictions under disaster remediation contracts; creating a criminal offense. Based on information provided by the Texas Department of Licensing & Regulation, Office of the Attorney General, and the Texas Commission on Environmental Quality, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

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LBB Staff: WP, DFR, CLo, SGr, AF

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 7, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business & Commerce Code relating to restrictions under disaster remediation contracts; creating a criminal offense. Based on information provided by the Texas Department of Licensing & Regulation, Office of the Attorney General, and the Texas Commission on Environmental Quality, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect on September 1, 2019.

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Source Agencies: 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 582 Commission on Environmental Quality

LBB Staff: WP, CLo, SGr, DFR, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 25, 2019

TO: Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business & Commerce Code relating to restrictions under disaster remediation contracts; creating a criminal offense. Based on information provided by the Texas Department of Licensing & Regulation, Office of the Attorney General, and the Texas Commission on Environmental Quality, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect on September 1, 2019.

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Source Agencies: 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 582 Commission on Environmental Quality

LBB Staff: WP, CLo, SGr, DFR, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 15, 2019

TO: Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Business & Commerce Code relating to restrictions under disaster remediation contracts; creating a criminal offense. Based on information provided by the Texas Department of Licensing & Regulation, Office of the Attorney General, and the Texas Commission on Environmental Quality, this analysis assumes that the duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

The bill would take effect on September 1, 2019.

Local Government Impact

A Class B misdemeanor is punishable by a fine of not more than \$2,000, confinement in jail for a term not to exceed 180 days, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Source Agencies: 302 Office of the Attorney General, 452 Department of Licensing and Regulation, 582 Commission on Environmental Quality

LBB Staff: WP, CLo, SGr, DFR, AF

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

May 18, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **Committee Report 2nd House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Business and Commerce Code as it relates to disaster remediation contracts. Under the provisions of the bill, for a disaster remediation contractor to require prepayment for services would, under certain circumstances, be punishable as a Class B misdemeanor in the absence of intent to defraud, or, with intent to defraud, as a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000. A Class B misdemeanor is punishable by confinement in county jail for a term not to exceed 180 days and in addition to confinement, an optional fine not to exceed \$2,000. This analysis assumes the provisions of the bill would not result in a significant impact on the demand for state correctional resources.

Source Agencies:

LBB Staff: WP, LM, DGi

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

May 17, 2019

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **As Engrossed**

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Source Agencies:

LBB Staff: WP, LM, DGi

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

April 25, 2019

TO: Honorable Trey Martinez Fischer, Chair, House Committee on Business & Industry

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2856 by Morrison (Relating to restrictions under disaster remediation contracts; creating a criminal offense.), **Committee Report 1st House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Business and Commerce Code as it relates to disaster remediation contracts. Under the provisions of the bill, for a disaster remediation contractor to require prepayment for services would, under certain circumstances, be punishable as a Class B misdemeanor in the absence of intent to defraud, or, with intent to defraud, as a third degree felony.

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