

BILL ANALYSIS

Senate Research Center

S.B. 1766
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Business & Commerce
5/31/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, certain governmental agencies require professional appraisers to indemnify or defend an agency for liability—even when the potential damages arise from the actions of a governmental agency itself.

Appraisers are often small businesses that could not afford the significant legal expense of a duty to defend a governmental entity, especially since a typical contract leaves professional liability uninsurable. In addition, appraisals are contemporaneously reviewed by all parties at the time of closing—leaving little to sue over after the fact.

S.B. 1766 ensures that appraisers cannot be held liable for the negligence or mistakes made by a governmental entity. Under this legislation, provisions of contracts for appraisal services, or a promise in connection with the contract, is void and unenforceable if the provision requires a licensed appraiser to indemnify or hold harmless a governmental agency against liability for damage.

S.B. 1766 does not prohibit a governmental agency from including in and enforcing a provision in a contract for appraisal services that relates to the scope, fees, and schedule of a project in the contract. S.B. 1766 applies only to a contract for appraisal services for which a request for proposals or qualifications is first published or distributed on or after the effective date of this Act.

S.B. 1766 amends current law relating to indemnification and duties of real property appraisers under certain governmental contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 271, Local Government Code, by adding Section 271.9041, as follows:

Sec. 271.9041. APPRAISAL SERVICE CONTRACTS; INDEMNIFICATION LIMITATIONS; DUTIES OF APPRAISER. (a) Defines "governmental agency."

(b) Provides that this section applies only to a contract for appraisal services for real property entered into by a licensed appraiser and a governmental agency.

(c) Provides that a provision of a contract for appraisal services, or a promise in connection with the contract, is void and unenforceable if the provision requires a licensed appraiser to indemnify or hold harmless a governmental agency against liability for damage, other than damage to the extent the damage is caused by or results from an act of:

(1) negligence;

(2) intentional tort;

(3) intellectual property infringement; or

(4) failure to pay:

(A) a subcontractor or supplier committed by the appraiser or the appraiser's agent;

(B) a consultant under contract; or

(C) another person over which the appraiser exercises control.

(d) Provides that a provision of a contract for appraisal services, or a promise in connection with the contract, except as provided by Subsection (e)(2), is void and unenforceable if the provision requires a licensed appraiser to defend a person against a claim based wholly or partly on the negligence or fault of, or breach of contract by:

(1) the governmental agency that is a party to the contract;

(2) an employee or agent of the governmental agency; or

(3) another person over which the governmental agency exercises control, other than the appraiser or an employee, agent, or consultant of the appraiser.

(e) Authorizes a contract for appraisal services to require:

(1) the reimbursement of a governmental agency's reasonable attorney's fees in proportion to an appraiser's liability; and

(2) an appraiser to name a governmental agency as an additional insured under the appraiser's general liability insurance policy and provide any defense provided by the policy.

(f) Requires that a contract for appraisal services require a licensed appraiser to perform services:

(1) with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser.

(g) Provides that a provision of a contract for appraisal services establishing a different standard of care than a standard described by Subsection (f) is void and unenforceable. Provides that the standard of care described by Subsection (f) applies if a contract contains a void and unenforceable provision described by this subsection.

(h) Provides that this section does not prohibit a governmental agency from including in and enforcing a provision in a contract for appraisal services that relates to the scope, fees, and schedule of a project in the contract.

SECTION 2. Provides that Section 271.9041, Local Government Code, as added by this Act, applies only to a contract for appraisal services for which a request for proposals or a request for qualifications is first published or distributed on or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2023.