By:  Creighton S.B. No. 1766

(In the Senate - Filed March 7, 2023; March 20, 2023, read first time and referred to Committee on Business & Commerce; April 26, 2023, reported favorably by the following vote: Yeas 11, Nays 0; April 26, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Schwertner           X

King                 X

Birdwell             X

Campbell             X

Creighton            X

Johnson              X

Kolkhorst            X

Menéndez             X

Middleton            X

Nichols              X

Zaffirini            X

A BILL TO BE ENTITLED

AN ACT

relating to indemnification and duties of real property appraisers under certain governmental contracts.

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

SECTION 1.  Subchapter Z, Chapter 271, Local Government Code, is amended by adding Section 271.9041 to read as follows:

Sec. 271.9041.  APPRAISAL SERVICE CONTRACTS; INDEMNIFICATION LIMITATIONS; DUTIES OF APPRAISER. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

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

(c)  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)  Except as provided by Subsection (e)(2), 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 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)  A contract for appraisal services may 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)  A contract for appraisal services must 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)  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. If a contract contains a void and unenforceable provision described by this subsection, the standard of care described by Subsection (f) applies.

(h)  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.  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.  This Act takes effect September 1, 2023.

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