THE LEGACY OF CITY OF HUTTO V. LEGACY HUTTO, LLC: HOW A MISSING ONE-PAGE “DISCLOSURE OF INTERESTED PARTIES” FORM MADE A CONTRACT UNENFORCEABLE

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INTRODUCTION

When Legacy Hutto, LLC, entered into its contract for a mixed-use real estate development with the City of Hutto on September 20, 2019, it believed that it had a valid, enforceable contract.¹ Yet when Legacy Hutto, LLC, later sued to enforce the contract against the City of Hutto, the trial court granted the City’s plea to the jurisdiction and Rule 91a motion to dismiss on grounds that the contract did not meet the requirements in § 271.151 sufficient to waive governmental immunity.² One of the specific issues was that Legacy

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¹ See Legacy Hutto LLC’s Cross-Appellant’s Brief at 21, City of Hutto v. Legacy Hutto, LLC, No. 07-21-00089-CV, 2022 Tex. App. LEXIS 4907 (Tex. App.—Amarillo July 18, 2022, pet. filed Nov. 18, 2022) (mem. op.) review granted, opinion vacated, remanded to district court, No. 22-0973, 2024 WL 1122521 (Tex. Mar. 15, 2024) (“The Trial Court erroneously granted Hutto’s Rule 91a Motion to Dismiss and Plea to the Jurisdiction for multiple reasons. First, Legacy properly pleaded a valid waiver of immunity under Chapter 271 of the Local Government Code and showed that it met all of the elements to establish that waiver applied. Specifically, the MDA was a written agreement containing the essential terms for Legacy to provide services to Hutto, and it was properly executed on behalf of Hutto.”); see id. at 1 (“This litigation arises out of City of Hutto’s (‘Hutto’) failure to honor its written agreements with Legacy Hutto, LLC (‘Legacy’) related to the development of a project known as the Perfect Game Project.”); City of Hutto v. Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907, at *2 (“The MDA provided for the creation of a mixed-use real estate development that would include commercial, residential, recreational, and other spaces.”).

² Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907, at *2 (“Legacy filed suit against the City in June of 2020 for breach of contract.”); City of Hutto’s Brief at 15, Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907 (No. 07-21-00089-CV) (“On April 16, 2021, the trial court signed the Order, which dismissed Legacy’s claims for lack of jurisdiction, but after recognizing it held no jurisdiction over the matter, purportedly authorized Legacy to assert new causes of action against the City.”);
did not submit evidence of a “Disclosure of Interested Parties” form pursuant to § 2252.908 of the Texas Government Code. On appeal, the court of appeals held that the contract was not enforceable.

As a general rule, a plaintiff asserting a breach-of-contract claim in Texas must prove: (1) the existence of a valid contract; (2) that they performed or tendered performance as the contract required; (3) the defendant breached the contract; and (4) the defendant’s breach caused their damages. A party can prove the first element—the existence of a valid contract—if it can establish that: an offer was made, the other party accepted the offer, the parties had a meeting of the minds, each party consented to the terms, and the parties executed and delivered the contract with the intent that it be mutual and binding.

But when one of the parties is a governmental entity in Texas, drafting a valid and enforceable contract becomes more complex because the contract must meet the general requirements for contracts mentioned previously along with the requirements of Texas Local Government Code § 271.152’s waiver of immunity provision. Specifically, the contract must also establish that: (1) the party against whom the waiver is asserted is a “local governmental entity,” (2) the entity is authorized by statute or the Constitution to enter into contracts, and (3) the entity has in fact entered into a contract that is “subject to this subchapter,” which is defined as “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

Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907, at *3 (“The City asserted that Legacy’s claims do not fall within the waiver provided by section 271.152 because the contract in question was not ‘properly executed’ as required by the statute. The trial court granted the City’s motion to dismiss and plea to the jurisdiction.”).


Id at *12. Note that Legacy Hutto, LLC filed its petition for review before the Texas Supreme Court on November 18, 2022. Petition for Review, Legacy Hutto, LLC v. City of Hutto, No. 22-0973 (Nov. 18, 2022). Though the Texas Supreme Court granted the petition for review, vacated the court’s opinion, and remanded for further proceedings in light of the new law on March 15, 2024, the focus of this note is on the Court of Appeals’ decision and the chain reaction it had. Legacy Hutto, LLC v. City of Hutto, No. 22-0973, 2024 WL 1122521, at *2 (Tex. Mar. 15, 2024).


See TEX. LOC. GOV'T CODE ANN. § 271.152; see also Republic Power Partners, L.P. v. City of Lubbock, 424 S.W.3d 184, 194 (Tex. App.—Amarillo 2014, no pet.) (“[T]here is but one route to the courthouse for breach-of-contract claims against a governmental entity, and that route is through section 271.152.”).
governmental entity. Because contracts with governmental entities are more complex, parties believing they have adequately contracted with a governmental entity may find themselves left trying to enforce an unenforceable contract.

Take, for example, the case of *Big Blue Properties WF, LLC v. Workforce Resource, Inc.* There, Workforce Resource, a governmental entity, contracted with Big Blue Properties, LLC, for office space in exchange for rent payments. It was undisputed that Big Blue and Workforce Resource entered into a contract that contained each party’s basic obligations. Yet the trial court granted Workforce Resource’s plea to the jurisdiction on grounds that the contract did not meet the requirements of a contract in § 271.151 to waive its immunity because it was not an agreement for the provision of “goods or services to the governmental entity.” In other words, had Workforce Resource not been a governmental entity, Big Blue’s contract likely would have been enforceable.

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9In a podcast hosted by Lloyd Gosselink, P.C., attorneys Stefanie Albright and James Parker talk about the different aspects of immunity issues that might arise in contracts with governmental entities and note that governmental contracts “require[] more than just a regular lawyer who writes contracts because these are a special type of contract and it is full of pitfalls for the unwary.” Listen in with Lloyd Gosselink, *Episode Five – Governmental Immunity and Contract Provisions*, at 25:01–25:15 (May 26, 2021, 8:00 AM) (accessed using Apple Podcasts).

10No. 02-21-00135-CV, 2022 Tex. App. LEXIS 3740, at *1 (Tex. App.—Fort Worth June 2, 2022, pet. denied) (mem. op.).

11See id. at *4 (“Big Blue sued Workforce Resource for breach of contract to collect the rent due under all three leases, pleading that Workforce Resource was a local governmental entity for which immunity had been waived under Local Government Code Section 271.152.”).

12Id.

13Id. at *7; see id. at *1–2 (“The trial court agreed, granted the plea, and dismissed Big Blue’s breach-of-contract claim . . . . But because the leases at issue are not contracts for the provision of services to Workforce Resource, Section 271.152 does not apply and thus does not waive Workforce Resource’s immunity. Accordingly, we will affirm the trial court’s judgment.”) (citations omitted); see id. at *15 (“Because the leases merely conveyed leasehold property interests to Workforce Resource—without requiring that Big Blue perform some ‘service’ for Workforce Resource’s benefit—and because no written addendum for services was executed, we hold that the leases are not contracts for the provision of services to Workforce Resource and that Section 271.152 thus does not waive Workforce Resource’s immunity. See TEX. LOC. GOV’T CODE ANN. §§ 271.151(2)(A), 271.152. Accordingly, the trial court did not err by granting Workforce Resource’s plea to the jurisdiction, and we overrule Big Blue’s third issue.”).
Or consider the contract between the Lower Colorado River Authority (LCRA) and Travis County Municipal District No. 12 (MUD 12), in which the LCRA agreed to provide MUD 12 with raw water in exchange for specified payments. The parties conducted business under the terms of the Contract until a dispute arose. MUD 12 sued the Agency for breach of contract. MUD 12 pled that the Agency’s sovereign immunity was waived because MUD 12 agreed to provide “services” to the Agency in the form of “installation and conveyance of the master meter.” The Agency filed a plea to the jurisdiction, which the court of appeals ruled should be granted because the contract was silent on two essential terms: price and time of performance. While acknowledging that not every contract failing to specify the price to be paid for services is necessarily unenforceable, the court of appeals held that by failing to state these two terms, the contract did not “state the essential terms” of an agreement by MUD 12 to provide services to the Agency and thus did not waive immunity under § 271.152.

Certainly, each of these parties believed they had a valid, enforceable contract when the contract was executed, yet later both found out the hard way that they did not. These types of cases happen because the additional requirements in § 271.152’s waiver of immunity provision make it more difficult to execute enforceable contracts with a governmental entity than to execute an enforceable contract with a non-governmental party.

Despite legislative updates that became effective on June 1, 2023, the Seventh Court of Appeals’ ruling in July 2022 in City of Hutto v. Legacy Hutto, LLC set off a chain reaction that has made it more difficult to draft an enforceable contract sufficient to waive a governmental entity’s immunity. There, the Court of Appeals held that Legacy Hutto’s failure to prove up a

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15 Id. at 553.
16 Id.
17 Id.
18 Id. at 553, 557.
19 Id. at 557.
20 As discussed above, supra note 9, in a podcast hosted by a Lloyd Gosselink, attorneys Stefanie Albright and James Parker talk about the different aspects of immunity issues that might arise in contracts with governmental entities and note that governmental contracts “require[] more than just a regular lawyer who writes contracts because these are a special type of contract and it is full of pitfalls for the unwary.” Listen in with Lloyd Gosselink, Episode Five – Governmental Immunity and Contract Provisions, at 25:01–25:15 (May 26, 2021, 8:00 AM) (accessed using Apple Podcasts).
“Disclosure of Interested Parties” form meant that the contract was not “properly executed.” Because it was not “properly executed,” the City’s immunity was not waived. At the time, the Legacy Hutto decision raised concerns for business entities that had already contracted with a governmental entity and were performing under the contract but had not submitted a “Disclosure of Interest Parties” form. In response to the Court’s decision in Legacy Hutto, the Texas Legislature amended the “Disclosure of Interested Parties” statute. The amendments resolved most of the concerns, but the amendment also mutated a statute intended to promote transparency into a tool that governmental entities could use to void contracts in the future.

This Note addresses whether a failure to prove up a “Disclosure of Interested Parties” form should have prevented a contract from being “properly executed” under § 271.151 in the first instance. Part I provides a primer on governmental immunity and the case law surrounding one of the five requirements—i.e., “properly executed”—of Texas Local Government Code § 271.151. Part II provides an analysis of the Seventh Court of Appeals’ decision in City of Hutto v. Legacy Hutto, LLC, and the background leading up to this decision. Part III focuses on the immediate consequences of the Legacy Hutto decision from the standpoint of business entities that have government contracts, mitigated by the 2023 legislative updates. Part IV examines the original legislative intent for § 2252.908 to determine if the statute was ever intended to provide governmental entities with the ability to void contracts in which the “Disclosure of Interested Parties” form is required but not submitted. Finally, Part IV wraps up by examining the effects of the amended statute currently in effect.

I. A PRIMER ON GOVERNMENTAL IMMUNITY AND THE “PROPERLY EXECUTED” ELEMENT IN § 271.151

When a plaintiff sues the State, sovereign immunity protects the State by depriving the trial court of subject matter jurisdiction unless the State has

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22 Id. at *12.
23 2023 TEX. GEN. LAWS 424.
24 Sovereign immunity and governmental immunity are similar concepts. Governmental immunity operates like sovereign immunity but provides protection to political subdivisions of the State, including counties, cities, and other recognized governmental entities. See McLennan Cnty. Water Control & Improvement Dist. #2 v. Geer, No. 10-17-00399-CV, 2020 Tex. App. LEXIS 5663, at *3–4 (Tex. App.—Waco July 22, 2020, no pet.) (mem. op.); Chambers–Liberty Cnty.
consented to the suit. In Texas, the State or governmental entity properly asserts sovereign immunity in a plea to the jurisdiction. A plea to the jurisdiction is a dilatory plea—i.e., one that delays an action based on procedural issues—and seeks dismissal of a case specifically for lack of subject-matter jurisdiction. The purpose of a plea to the jurisdiction is to defeat a plaintiff’s cause of action against the State or governmental entity defendant before incurring the full costs of litigation.

A. Sovereign Immunity in Texas as it Applies to Breach of Contract Claims

When a plaintiff sues a governmental entity for breach of contract, the plaintiff must establish consent to sue by bringing suit under a special statute. In Texas, a plaintiff bringing suit against a local governmental entity for breach of contract alleges that governmental immunity is waived under §271.152 of the Texas Local Government Code. This section waives qualifying local governmental entities’ immunity from suit for certain breach of contract claims, providing:

A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for

Navigation Dist. v. State, 575 S.W.3d 339, 344 (Tex. 2019) (“Sovereign immunity protects the State of Texas and its agencies from suit and liability, whereas governmental immunity provides similar protections to the State’s political subdivisions.”).

26Id. at 225–26.
28Miranda, 133 S.W.3d at 228.
30See TEX. LOC. GOV’T CODE ANN. § 271.152; see also Republic Power Partners, L.P. v. City of Lubbock, 424 S.W.3d 184, 194 (Tex. App.—Amarillo 2014, no pet.) (“[T]here is but one route to the courthouse for breach-of-contract claims against a governmental entity, and that route is through section 271.152.”).
breach of the contract, subject to the terms and conditions of this subchapter.\textsuperscript{31}

Thus, for a waiver of immunity under § 271.152 to apply, three requirements must be met: (1) the party against whom the waiver is asserted must be a local governmental entity as defined by the Local Government Code;\textsuperscript{32} (2) the entity must be authorized by statute or the Constitution to enter into contracts; and (3) the entity must in fact have entered into a contract subject to this subchapter. Section 271.151 defines a “contract subject to this subchapter” as “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.”\textsuperscript{33}

Effectively, the third requirement of § 271.152 encompasses five sub-elements; the contract must: (1) be in writing; (2) state the essential terms of the agreement; (3) provide for goods or services; (4) to the local governmental entity; and (5) be properly executed on behalf of the local governmental entity.\textsuperscript{34} Because this comment focuses on the fifth element of § 271.151—i.e., “properly executed on behalf of the local governmental


\textsuperscript{32}\textit{Tex. Loc. Gov’t Code Ann.} § 271.151 (“Local governmental entity’ means a political subdivision of this state, other than a county or a unit of state government, as that term is defined by Section 2260.001, Government Code, including a: (A) municipality; (B) public school district and junior college district; and (C) special-purpose district or authority, including any levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, emergency service organization, and river authority.”). Another trap that practitioners must know is that a “county” is not included in the definition of a “local governmental entity.” See \textit{Patterson v. Marcantel}, No. 09-16-00173-CV, 2017 Tex. App. LEXIS 10046, at *36 (Tex. App.—Beaumont Oct. 26, 2017, no pet.) (mem. op.) (“[S]ection 271.152 does not waive the County’s immunity for breach of contract.”).

\textsuperscript{33}\textit{Tex. Loc. Gov’t Code Ann.} § 271.151(2)(A). Though not addressed within this note, subsection (B) adds to the definition of a “contract subject to this subchapter,” stating that it includes “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.”\textit{Tex. Loc. Gov’t Code Ann.} § 271.151(2)(B).

entity”—the last portion of the primer in Part I lays out the judicial history of four important cases where Texas courts have interpreted this key phrase.35

B. Case Law Interpretations of “Properly Executed” in § 271.151

The Texas Supreme Court first analyzed the phrase “properly executed” in City of Houston v. Williams.36 There, 540 former Houston firefighters alleged wrongful underpayment of lump sums due upon termination of their employment.37 The firefighters argued that certain Houston ordinances constituted a written employment contract between the City and the firefighters for which immunity was waived under § 271.152.38 The City did not deny that the ordinances were duly “enacted,” but challenged whether they were “executed.”39 When analyzing whether the ordinances were “executed,” the Texas Supreme Court pointed out that: “Section 271.151(2) does not define ‘executed.’”40 The Court, however, noted that “execute” means “finish” or to “complete” and stated that it is “not necessary to sign an instrument in order to execute it, unless the parties agree that a signature is required.”41 After the Court explained that “[n]o agreement between the City and the Firefighters establish[ed] that a signature was required,” the Court held that the ordinances, “when duly enacted by the City with the intent to be bound, were ‘executed’ under section 271.151(2).”42 In sum, the phrase “properly executed on behalf of the local governmental entity” did not necessarily require a signature for the contract to be executed but required the contract to be duly enacted by the governmental entity with the intent to be binding on the parties.

Following City of Houston v. Williams, the Dallas Court of Appeals addressed a similar situation, where “former [first responders] alleg[ed] that the City breached its contract with them regarding their pay.”43 There, the

35 Big Blue could not enforce its contract because it was not a contract for goods or services, and MUD 12 could not enforce its contract because it did not state the essential terms of the agreement. See infra Part I.
36 See 353 S.W.3d at 132.
37 Id. at 131.
38 Id. at 132.
39 Id. at 139.
40 Id.
41 Id.
42 Id.
City passed an ordinance raising salaries, but years later the first responders accused the City of failing to pay as required by the ordinance. The first responders sued. The City filed pleas to the jurisdiction asserting that it had governmental immunity, which the trial court denied. Eventually, the Dallas Court of Appeals addressed whether the first responders had plead jurisdictional facts sufficient to waive governmental immunity under Texas Local Government Code § 271.152.

In opposition, the City “contend[ed] that it did not properly execute the contract . . . because none of the documents [were] signed or approved by the appropriate people.” Unlike the ordinances in Williams, the Dallas Charter did require public contracts to be signed by the city manager and approved by a city attorney. However, the Dallas Court of Appeals disagreed with the City for two reasons. First, it stated that in adopting the ordinance, the City had said it was “valid and binding,” which was sufficient to evidence its intent to act in a specified way. Second, requiring the city manager’s signature on the ordinance to make its terms valid and binding on the City would have rendered both the charter and the ordinance meaningless because the “City’s charter state[d] that when the majority of the qualified electors vote in favor of a proposed ordinance the ordinance becomes ‘a valid and binding ordinance of the city, and . . . cannot be repealed or amended except by a vote of the people.’” The Court concluded that the first responders had alleged a “unilateral contract with the City that satisfie[d] the requirements of the waiver of immunity for breach of contract claims in section 271.152 of the local government code.” Thus, the Dallas Court of Appeals’ interpretation of the phrase “properly executed” aligned with the Texas Supreme Court’s opinion in Williams—the contract must be duly enacted by the governmental entity with the intent to be binding on the parties.

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45 City of Dallas, 415 S.W.3d at 339–40.
46 Id. at 340.
47 Id.
48 Id. at 341.
49 Id. at 349.
50 See id. (citing Dallas, Tex., Charter, ch. XXII, § 1 (2006) (“requiring public contracts to be signed by city manager and approved by city attorney.”)).
51 Id.
52 Id.
53 Id.
54 Id. at 350.
Nine years after first analyzing the phrase “properly executed” in the Williams decision, the Texas Supreme Court addressed another case requiring it to determine the meaning of “properly executed.” In that case, Amex Properties, LLC, through one its owners, signed a contract to lease space to a charter school district. The president and superintendent of the district signed on behalf of “The El Paso Education Initiative, Inc.,” as its president, and a notary attested that the president “executed the instrument on behalf of the El Paso Education Initiative, Inc.” The final paragraph of the contract stated that each signatory “represents and warrants” that she had the authority to execute the lease and that it is “binding upon the entity.”

“Despite these representations, Amex understood that the district’s board had to approve the lease to finalize it.” However, the president never presented the lease to the district’s board for approval and instead “reported that the Amex negotiations had been ‘unsuccessful.’” Despite the lack of board approval, Amex detrimentally relied on the contract. Then, the District repudiated the contract and Amex ultimately was forced to lease the property to another tenant at a lower rate.

Amex sued the District for anticipatory breach of the lease, seeking damages that included some of the costs incurred in detrimental reliance on the contract. The District filed multiple pleas to jurisdiction, asserting that it was immune from this suit on grounds that the lease was not “properly executed” because the District’s governing board had never approved the lease as required by the Texas Education Agency regulations, and the board had never delegated its authority through an amendment to the school’s charter, approved by the Commissioner of Education.

The Court began its analysis by explaining that the phrase “properly executed” must be construed to give effect to the legislature’s intent based...
on the phrase’s plain meaning unless the plain meaning would lead to absurd or nonsensical results. The Court then noted that the adjective “properly” necessarily limited the verb “executed” so that “not all executed contracts qualify for Chapter 271’s waiver.” It held, in effect, that a contract is only properly executed when it was “executed in accord with the statutes and regulations prescribing that authority.” The Court also noted that “proper” meant “[a]ppropriate, suitable, right, fit, or correct” or “according to the rules.” The Court pointed out that the statute did not require the contract to be executed “by” the governmental entity, but rather required the contract to be executed on the entity’s “behalf,” which was notable because it acknowledged that contracts with governmental entities are “not typically signed by all members of the entity’s governing authority.” But in the same way that a government official “cannot bind the government to a contract based on apparent authority, an agent acting on behalf of a charter-holder cannot bind it in a way that exceeds its statutory grant of authority to enter into contracts.” The Court agreed with the District, holding that “[a]bsent board approval or a charter amendment delegating the board’s authority to [its president], the lease was not ‘properly executed on behalf of’ the district because the board did not approve it.” The Court explained that the president acted as the board’s authorized negotiator, but she lacked the power to “properly execute” the lease “on behalf of” the board without board approval.

Put another way, a governmental entity’s agent, on its own, cannot bind the governmental entity where the contract requires board approval. In those instances, the contract will not be duly enacted because the agent will have exceeded its statutory grant of authority to enter contracts. As a result, the contract would not be properly executed on behalf of the governmental entity. In contrast to Houston and Arredondo, Amex Properties LLC did not

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65 Id. at 531.
66 Id. at 531–32.
67 Id. at 532.
68 Id.
69 Id. at 533.
70 Id.
71 Id.
72 Id.
73 Id.
74 Id.
75 Id.
involve ordinances enacted by the entity—it involved a traditional contract negotiated and signed by an agent without authority to do so.\textsuperscript{76}

More recently, the Corpus Christi Court of Appeals examined whether a severance agreement between the City and its former city manager, Edward Meza, had been properly executed sufficient to waive immunity after Meza sued for breach of contract when the City rescinded Meza’s severance agreement.\textsuperscript{77} There, the court held that Meza raised a fact question as to whether the severance agreement was “properly executed,” and thus the trial court was correct in denying the City’s plea to the jurisdiction.\textsuperscript{78} In stating the rule for “properly executed” under Texas Local Government Code § 271.151, the court followed the Texas Supreme Court’s language in \textit{Amex} nearly verbatim.\textsuperscript{79}

The City argued that Meza’s severance agreement, though the city commission approved it, was not “properly executed” because it was never brought before the city commission for final approval, or in the alternative, it was rescinded during the meeting.\textsuperscript{80} Meza countered that “the severance agreement was properly executed because it was approved by the city commission . . . and signed by the mayor.”\textsuperscript{81} The court closely examined the minutes from that meeting, which showed that the “city commission discussed an ‘employee severance package’ . . . in closed session and approved certain requirements in an open session following the closed session.”\textsuperscript{82} Moreover, the court found that the severance agreement submitted by Meza as evidence contained the mayor’s signature, which under the city charter gave the mayor the authority to sign all ordinances, resolutions, and financial statements of the City.\textsuperscript{83} The court held that the trial court correctly denied the City’s plea to the jurisdiction because Meza raised a fact question as to whether the severance package was “properly executed.”\textsuperscript{84} In contrast to \textit{Amex}, where the signing party did not have the authority to bind the
governmental entity, the mayor in *Meza* did have the authority to sign a contract and bind the parties.\(^{85}\)

Together, these courts hold that the “properly executed on behalf of a governmental entity” element does not necessarily require a contract to be signed to be properly executed but that the contract be duly enacted by the governmental entity with the intent to be binding on the parties.\(^{86}\) Moreover, a contract negotiated and signed by an agent cannot bind the governmental entity if the agent exceeds its statutory grant of authority to enter the contract.\(^{87}\) For governmental entities, this generally requires board or council approval.\(^{88}\) But in *Legacy Hutto*, the trial court and court of appeals were faced with a new issue with respect to whether a contract was “properly executed”: Does the failure to prove up a Form 1295 prevent a contract from being “properly executed”?\(^{89}\)

II. *CITY OF HUTTO V. LEGACY HUTTO, LLC: HOW A ONE-PAGE FORM MADE A CONTRACT UNENFORCEABLE*

The significance of *City of Hutto v. Legacy Hutto, LLC* extends beyond being the first case to cite and interpret § 2252.908’s “Disclosure of Interested Parties” provision; its significance is that it is the first case where a court determined that the absence of a Form 1295 rendered a contract not “properly executed” under § 271.151.

A. The Facts & Procedural History

The decision in *Legacy Hutto* centers around a Master Development Agreement (Contract) that Legacy’s president and one of the City of Hutto’s former city managers signed in September 2019.\(^{90}\) The Contract provided for the creation of a mixed-use real estate development known as the “Perfect

\(^{85}\) Compare id. (the governmental actor did have authority to bind the parties) with El Paso Educ. Initiative, Inc. v. Amex Props., LLC, 602 S.W.3d 521, 533 (Tex. 2020) (The signing party did not have the authority to bind the parties.).

\(^{86}\) Id.

\(^{87}\) Amex Props., LLC, 602 S.W.3d at 533.

\(^{88}\) See, e.g., id.

\(^{89}\) City of Hutto v. Legacy Hutto, LLC, No. 07-21-00089-CV, 2022 Tex. App. LEXIS 4907, at *2 (Tex. App.—Amarillo July 18, 2022, pet. filed) (mem. op.).

\(^{90}\) Id.
Game Project” or “Project Expansion.”91 The mixed-use development would include commercial, residential, recreation, and other spaces such as baseball fields and an indoor sports facility, and was expected to usher in an estimated $200 million economic boost annually.92

Ultimately, things went south, and in June 2020, Legacy filed suit against the City for breach of contract.93 In its petition, Legacy alleged, among other things, that the City made misrepresentations, failed to work toward successful issuance of bonds, and failed to work in good faith toward the implementation of the project.94 Legacy also claimed that it had accrued $3.3 million for work already long completed.95 Because the Contract was with the City, Legacy further alleged that the City’s governmental immunity was waived under § 271.152.96 The City filed a plea to the jurisdiction and Rule 91a motion to dismiss claiming immunity from suit based on the doctrine of governmental immunity, specifically asserting that Legacy’s claims did not fall within § 271.152’s waiver because the Contract was not “properly executed” as required by the statute.97 The trial court granted the City’s motion to dismiss and plea to the jurisdiction, but ordered that Legacy could amend its petition to include previously unpled causes of action.98 Both parties appealed to the Third Court of Appeals in Austin, but the Texas Supreme Court transferred the case to the Seventh Court of Appeals in Amarillo pursuant to its docket equalization efforts.99

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91 Id.; Legacy Hutto’s Cross-Appellant’s Brief at 1, Legacy Hutto, LLC, 2021 WL 2837745 (No. 07-21-00089-CV).
94 Id.
95 Plaintiff’s Third Amended Petition at ¶ 35, Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907 (No. 20-0863-C395).
97 Id. at *2–3.
98 Id. at *3.
99 Id. at *n.1. See also TEX. R. APP. P. 41.3 (“In cases transferred by the Supreme Court from one court of appeals to another, the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court’s decision otherwise would have been inconsistent with the precedent of the transferor court.”). Because the Seventh Court of Appeals must follow precedent within the Third Court of Appeals, the Seventh Court of Appeals in Amarillo’s decision in Legacy Hutto has
On appeal, the City raised two issues. In its first issue, the City asserted that the trial court erred by granting Legacy’s request for leave to amend its pleadings to include previously unpled causes of action because the trial court lacked jurisdiction. In the alternative, the City argued that granting Legacy’s request for leave to amend was an abuse of discretion. In its cross-appeal, Legacy raised three issues. The focus of the court’s opinion, and this Note, is on Legacy’s first issue where it claimed that the trial court erred in granting the City’s plea to the jurisdiction.

B. The Seventh Court of Appeals’ Analysis

The Court addressed Legacy’s plea to the jurisdiction issue first because “subject matter jurisdiction is essential to the authority of a court to decide a case.” The Court explained that a party may challenge a Court’s subject matter jurisdiction by filing a plea to the jurisdiction. Because the party suing a governmental entity bears the burden of affirmatively demonstrating the trial court’s jurisdiction, the Court explained that Legacy would have to establish, among other things, that the City entered into a contract subject to § 271.151.

precedential value for the Third Court of Appeals. Also note that memorandum opinions have precedential value. See Hudson v. Paxton, No. 03-13-00368-CV, 2015 Tex. App. LEXIS 1704, at *8 (Tex. App.—Austin Feb. 20, 2015, pet. denied) (mem. op.) (“Texas Rule of Appellate Procedure 47.7 provides that memorandum opinions issued after January 1, 2003 have precedential value. See TEX. R. APP. P. 47.7. The comments to the rule specifically state that ‘[a]ll opinions and memorandum opinions in civil cases issued after the 2003 amendment [to rule 47] have precedential value.’”).

100 Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907, at *3.
101 Id.
102 Id.
103 Id.
104 Id. at *3–4.
105 Id. at *4; The court also noted that a plea to the jurisdiction is a “dilatory plea, the purpose of which is to defeat a cause of action without regard to whether the claims asserted have merit.”
106 See id. at *4–5.
107 Id. at *5 (“For section 271.152’s waiver to apply, three elements must be established: (1) the party against whom waiver is asserted must be a ‘local governmental entity,’ (2) the entity must be authorized to enter into contracts, and (3) the entity must have in fact entered into a ‘contract subject to this subchapter.’ The first two requirements for waiver of immunity are not in dispute in this case, but the parties disagree as to whether they formed a contract subject to the subchapter.”) (citations omitted).
The Court provided § 271.151’s definition of a “contract subject to this subchapter,” which as noted above, means “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.” The court focused on the “properly executed” requirement and stated that the contract would be properly executed if the contract’s execution “comport[ed] with the authority the legislature granted the governmental entity.” The Court then cited El Paso Education Initiative, Inc. v. Amex Properties, LLC, to illustrate how “establishing that a contract is ‘properly executed’ requires more than the showing that a representative of the governmental entity signed the contract.” Specifically, the Texas Supreme Court in Amex held that administrative rules required the charter school district’s board of directors to approve the lease or delegate its authority via an amendment even if the representative of the board had authority to negotiate and sign a lease. The Seventh Court of Appeals, through this case illustration, was setting up a key premise of its argument: it must take the inquiry one step further and determine whether the contract was properly executed by the city manager on behalf of the City.

The Court noted, in alignment with this point, that the City contended that the contract was not properly executed because Legacy did not comply with § 2252.908’s “Disclosure of Interested Parties” provision. Once again, the Court cited Amex to build its major premise: “a contract is properly executed when it is executed in accord with the statutes and regulations prescribing [its] authority.” To determine if Legacy’s contract with the City of Hutto was “properly executed” in accord with the statutes and regulations

108 Id. at *5–6.
109 Id. at *6.
110 Id.
111 Id. at *6–7.
112 Id. at *7.
113 Id. at *7–8 (“At the outset, Legacy argues that the issue of proper execution should not be considered because the City did not file a verified denial. Without a sworn plea, the instrument is received in evidence as fully proved. Because the City did not contest the authenticity of Jones’s signature in a verified denial, the contract was admissible as fully proved in that regard. But the City contends that, even if Jones had authority to execute the MDA on behalf of the City, the contract was nonetheless not properly executed because Legacy did not comply with section 2252.908 of the Texas Government Code. Section 2252.908 provides that governmental entities are not authorized to enter into contracts that have a value of at least one million dollars unless the contracting business entity first submits a disclosure of interested parties.”) (citations and footnotes omitted).
114 Id. at *9.
prescribing the City’s authority, the Court focused on the language of § 2252.908. The Court explained that § 2252.908 is a “governmental transparency law that prohibits a governmental entity, including a municipality from entering in certain contracts with a business entity unless the business entity submits a disclosure of interested parties” form “at the time the business entity submits the signed contract to the governmental entity.” Then the Court delivered the knockout punch to Legacy: “Because the City is statutorily prohibited from entering into the contract in the absence of the disclosure form, the contract cannot be ‘properly executed’ unless Legacy complied with section 2252.908 at its execution.” After reviewing Legacy’s amended petition, the Court pointed out that Legacy “did not present evidence of a submission.”

The Court reiterated its point, making clear that “[b]y statute, the City was prohibited from entering into the contract unless the disclosure was procured at the time the contract was submitted to the City.” The Court held that the Contract “was not ‘properly executed’ by the parties” and “[w]ithout a properly executed contract, there is no waiver of immunity under section 271.152” sufficient to find “error in the trial court’s decision to the grant the City’s plea to the jurisdiction.” In other words, the lack of a one-page “Disclosure of Interested Parties” form was enough to make Legacy’s contract unenforceable and bar any claims for its alleged $3.3 million in work performed.

Consequently, City of Hutto v. Legacy Hutto, LLC is an important case. Not only is it the first time that a court has interpreted § 2252.908, but it is the first time a court has held that a contract between a governmental entity and a business is unenforceable on the grounds that a one-page “Disclosure of Interested Parties” form was not submitted. Though the Texas Supreme Court recently vacated the Court of Appeals’ decision on March 15, 2024,

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115 See id.
116 Id.
117 Id. at *9–10.
118 Id. at *10. The Seventh Court of Appeals did note, however, that the City proffered evidence in the form of the city secretary’s affidavit asserting that the City had no record of receiving from Legacy the disclosure form. Ultimately, though, Legacy did not produce any evidence—such as an acknowledged Form 1295—to controvert the City’s evidence. See id. at *10–12.
119 Id. at *12.
120 Id.
the Court of Appeals’ ruling had already started a chain reaction that led a transparency statute to morph into a tool for governmental entities to void contracts in limited circumstances.

III. THE IMMEDIATE RAMIFICATIONS OF LEGACY HUTTO

One of the first concerns that arose after the Legacy Hutto decision was that it put other contracts—where the Form 1295 was missing—in jeopardy. Based on a cursory investigation of city council meeting minutes and Texas Ethics Commission Form 1295 filings, which showed that some governmental entities had entered into contracts without having received a Form 1295 from the business entity, this was a justified concern.122 If business entities did, in fact, have existing contracts with governmental entities where the Form 1295 was missing, the Court of Appeals’ decision in Legacy Hutto created a potential problem for these businesses: their contracts were arguably voidable by the governmental entity. Consequently, this section addresses the question that should have been on every business entity’s mind with a contract that could have been unenforceable under § 2252.908: What do we do now?

The most obvious solution for business entities that had not submitted a “Disclosure of Interested Parties” form appeared to be for those business entities to submit the form immediately. But this solution would not work because the statute requires the Form 1295 to be submitted “at the time the business entity submits the signed contract to the governmental entity.”123 Consequently, these businesses may have wondered what options they had

122 Because this Note’s goal is not to point out specific contracts that may have been voidable, the specific findings revealed during researching are not disclosed in this note. That research methodology was as follows. First, this Author performed a cursory investigation of all 2022 city council agendas for three different Texas cities, each of a different size population. The smallest city’s population was less than 50,000 people, the medium-size city’s population was more than 50,000 but less than 100,000, and the largest city’s population reviewed was more than 100,000 but less than 150,000. In conjunction with searching meeting minutes, this Author cross-referenced contracts listed as approved in the agendas with the Texas Ethics Commission’s Form 1295 search feature to see which contracts lacked a submitted Form 1295. Secondly, this Author submitted this research to his faculty advisor for review. Agreement emerged that contracts with one of the cities complied with the “Disclosure of Interested Parties” requirement nearly perfectly but that the other two cities may have executed a half-dozen to a dozen contracts even though the business entity never submitted the Form 1295. Thus, the inference from this cursory investigation was that some cities do a great job of ensuring that the Form 1295 was submitted whereas others may do a poorer job of ensuring that the Form 1295 is submitted.

123 TEX. GOV’T CODE ANN. § 2252.908(d).
following the Seventh Court of Appeals’ ruling in *Legacy*. Did they have *any* recourse to enforce the contract? If the breach of contract claim failed because immunity was not waived under § 271.152, could the governmental entity be estopped from using a missing Form 1295 as a defense under doctrines such as part performance? Could the entity recover under quantum meruit or promissory estoppel? For example, could *Legacy Hutto*, LLC at least recover reliance or restitution damages for its alleged $3.3 million in work already performed?

One purpose of this section is to provide a brief cautionary overview of the equitable remedies that are not available to business entities contracting with governmental entities. Equitable remedies such as promissory estoppel, quantum meruit, unjust enrichment, and waiver-by-conduct are unavailable to business entities trying to receive the benefit of their bargain because the express language of the waiver of immunity

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124 See *City of Deer Park v. Ibarra*, No. 01-10-00490-CV, 2011 Tex. App. LEXIS 6899, at *17–18 (Tex. App.—Houston [1st Dist.] Aug. 25, 2011, no pet.) (mem. op.) (“Because a claim for promissory estoppel is not a claim on a written contract, immunity is not waived under section 271.152 for such a claim. The workers’ promissory estoppel and quantum meruit claims sound in equity, and they are simply not included in section 271.152’s limited waiver of governmental immunity.”).

125 See *City of Willow Park v. E.S. & C.M., Inc.*, 424 S.W.3d 702, 712 (Tex. App.—Fort Worth 2014, pet. denied) (“We agree with our sister courts that section 271.152, by its express language, does not allow governmental entities to waive immunity for quantum meruit claims; see TEX. GOV’T CODE ANN. § 271.152 (‘A local governmental entity that . . . enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract . . . ’) (emphasis added). We therefore sustain appellant’s third issue.”) (some citations and footnotes omitted).

126 Richardson Hosp. Auth. v. Nnamdi Duru, 387 S.W.3d 109, 113–14 (Tex. App.—Dallas 2012, no pet.) (“Finally, Duru contends that . . . RHA was unjustly enriched. . . . However, the Texas Legislature has not created a waiver of governmental immunity for equitable claims that seek money damages.”); *Watson v. City of San Marcos*, No. 03-22-00307-CV, 2023 Tex. App. LEXIS 2515, at *8 (Tex. App.—Austin Apr. 20, 2023, pet. denied) (“As to Watson’s claim for unjust enrichment, it is established under Texas law that unjust enrichment is not an independent cause of action and therefore cannot, on its own, support a waiver of governmental immunity. . . . Furthermore, Watson did not allege any facts in his complaint that might support an implied or quasi-contractual obligation on the City’s part to release the liens without payment or to take any similar action. Accordingly, the trial court did not err in determining that it did not have jurisdiction over Watson’s claim related to unjust enrichment.”).

127 See *Sharyland Water Supply Corp. v. City of Alton*, 354 S.W.3d 407, 414 (Tex. 2011) (“We reject the invitation to recognize a waiver-by-conduct exception in a breach-of-contract suit against a governmental entity.”).
provision states that it is “for the purpose of adjudicating a claim for breach of the contract.”  

If a business cannot bring breach of contract claims or claims for equitable remedies, businesses might have had one surprising avenue left to receive relief: wait to get sued by the governmental entity. In Reata, the Texas Supreme Court explained that once a “governmental entity interjects itself into or chooses to engage in litigation to assert affirmative claims for monetary damages,” the “trial court acquires jurisdiction over the entity’s claims.” However, this is a very narrow exception that only applies if the governmental entity makes affirmative claims for monetary damages. Thus, it is likely that this exception will not apply in situations in which the governmental entity has no reason to initiate a lawsuit. The focus of this Note is whether the Legacy Hutto decision aligned with the legislature’s intended purpose for the statute. Part IV provides an overview of § 2252.908 and examines its legislative intent.

IV. AN OVERVIEW OF § 2252.908 AND ITS LEGISLATIVE INTENT

Part IV examines the original legislative intent for the “Disclosure of Interested Parties” statute. Specifically, Part IV examines whether the statute was ever intended to provide governmental entities with the ability to void contracts in which the “Disclosure of Interested Parties” form was required but not submitted.

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131 See 19 William V. Dorsaneo III, Texas Litigation Guide § 293.01 (2022) (“Moreover, the absence of immunity from suit under the rule of Reata is not complete, because it applies only to claims that are germane to, connected with, and properly defensive to the governmental entity’s claims, and extends only to claims for monetary damages that act to offset those asserted by the governmental entity [see Reata Constr. Co. v. City of Dallas, 197 S.W.3d 371, 376–377 (Tex. 2006) (government entity continues to have immunity from affirmative damage claims against it for monetary relief that exceeds amounts necessary to offset entity’s claims)].”). See also City of Conroe v. TPProperty LLC, 480 S.W.3d 545, 564 (Tex. App.—Beaumont 2015, no pet.) (“As illustrated by the Texas Supreme Court, this limited jurisdiction allowable under Reata may prove to be an insurmountable obstacle for recovery of any damages in a breach of contract suit.”).
When courts interpret a statute, the primary rule is that a court must give effect to legislative intent. The court determines legislative intent by looking first and foremost to the language of the statute, then to its legislative history, the objective sought, and the consequences that would flow from alternate constructions. However, “[t]he plain meaning of the text is the best expression of legislative intent unless a different meaning is apparent from the context, or the plain meaning leads to absurd or nonsensical results.” Yet the Texas Supreme Court has made it clear that courts cannot rewrite a statute under the guise of interpreting it.

With regard to governmental immunity, state agencies are immune from liability unless the legislature has clearly and unambiguously waived that immunity. The rule requiring a waiver of governmental immunity to be clear and unambiguous cannot be applied so rigidly that legislative intent is disregarded. Legislative intent is the “polestar of statutory construction.” Thus, this analysis begins where it should: at the plain language of the statute.

The text of § 2252.908(d) states:

“A governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency

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132 Crown Life Ins. Co. v. Casteel, 22 S.W.3d 378, 383 (Tex. 2000); see also TEX. GOV’T CODE ANN. § 312.005 (“In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.”).  
133 See Union Bankers Ins. Co. v. Shelton, 889 S.W.2d 278, 280 (Tex. 1994); Colorado County v. Staff, 510 S.W.3d 435, 444 (Tex. 2017); see also TEX. GOV’T CODE ANN. § 311.023 (“In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: (1) object sought to be attained; (2) circumstances under which the statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title (caption), preamble, and emergency provision.”).  
134 Colorado County, 510 S.W.3d at 444.  
135 Id.  
136 See Kerrville State Hosp. v. Fernandez, 28 S.W.3d 1, 3 (Tex. 2000); Tooke v. City of Mexia, 197 S.W.3d 325, 328–29 (Tex. 2006); see TEX. GOV’T CODE ANN. § 311.034 (“[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language.”).  
137 Kerrville State Hosp., 28 S.W.3d at 3.  
138 Id.
at the time the business entity submits the signed contract to
the governmental entity or state agency.\textsuperscript{139}

Based on the plain meaning alone, the statute appears to unambiguously
prohibit a governmental entity from entering into certain contracts with a
business entity unless the business entity submitted a “Disclosure of
Interested Parties” form (Form 1295).

Consequently, this short provision stirs up a handful of questions. For
dexample, did the use of “may not” as opposed to “must not” give the
governmental entity discretion to enter into a contract even if the Form 1295
is lacking?\textsuperscript{140} Or what if the Form 1295 was not submitted, prohibiting
the governmental entity from entering into a contract, but the governmental
entity proceeded to act as if it has a valid and enforceable contract anyways?
Could the improperly executed contract then become enforceable by part
performance or estoppel? And if failing to submit the Form 1295 makes a
contract unenforceable, what should happen when a governmental entity
“enters” into a contract knowing that it could void the contract later because
the Form 1295 is missing? To set the foundation for answering these
questions, the first part of this section delves into the plain meaning of the
statute to interpret the legislature’s intent for the “Disclosure of Interested
Parties” statute.

A. The Plain Meaning of the “Disclosure of Interested Parties”
Statute

The first question when looking to the plain language of this statute is:
Who does this provision apply to? Section 2252.908(d) states that a
“governmental entity or state agency may not enter into a contract . . . with a
business entity unless the business entity . . . submits a disclosure of

\textsuperscript{139}TEX. GOV’T CODE ANN. § 2252.908(d) (emphasis added).

\textsuperscript{140}The phrases \textit{must not} and \textit{may not} are “nearly synonymous. \textit{Must not} = is not required to.
\textit{May not} = is not permitted to. . . . Some drafters avoid \textit{may not} because it is sometimes ambiguous—
it can mean either ‘is not permitted to’ or ‘might not.’ For example, [consider] an application to a
law school [that] states: ‘This office may not consider applications received after April 30.’ Some
readers would take that to mean that the office has discretion whether to consider applications
received after April 30, whereas others would infer that some rule or regulation prohibits the office
from doing so.' BRYAN GARNER, GARNER ON LANGUAGE AND WRITING 178 (2009). However,
some states such as Texas have statutes that define “may not” as mandatory. See TEX. GOV’T CODE
ANN. § 311.016(5) (“May not’ imposes a prohibition and is synonymous with ‘shall not.’”). Thus,
the use of “may not” as opposed to “must not” is a non-issue.
interested parties . . .”\textsuperscript{141} Put simply: on its face, Section 2252.908 applies to contracts between governmental entities and business entities. But the statute defines these parties more specifically.

“‘Governmental entity’ means a municipality, county, public school district, or special-purpose district or authority”\textsuperscript{142} and “‘state agency’ means a board, commission, office, department, or other agency in the executive, judicial, or legislative branch of state government including an institution of higher education.”\textsuperscript{143} The statute also provides in subsection (a)(1) that a “‘business entity’ means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.”\textsuperscript{144}

If interpreted on these subsections alone, the requirement for a “disclosure of interested parties” would apply to every contract between a governmental entity and a business entity.

But subsection (b) limits this requirement to contracts of a governmental entity or state agency that: “(1) requires an action or vote by the governing body of the entity or agency before the contract may be signed; (2) has a value of at least $1 million; or (3) is for services that would require a person to register as a lobbyist under Chapter 305.”\textsuperscript{145} Note that because city councils usually must vote to execute contracts, subsection (b)(1) requires

\textsuperscript{141}TEX. GOV’T CODE ANN. § 2252.908(d) (emphasis added).

\textsuperscript{142}Id. § 2252.908(a)(2).

\textsuperscript{143}Id. § 2252.908(a)(4).

\textsuperscript{144}Id. § 2252.908(a)(1). In Legacy Hutto, LLC’s appellate brief, it argued that: “Section 2252.908 requires a ‘business entity’ to submit a disclosure of interested parties to Hutto. ‘Business entity’ is defined as ‘any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.’ Legacy is not a sole proprietorship, partnership, or corporation. Instead, it is a limited liability company and as such is not responsible for submitting this disclosure.” Brief for Cross-Appellant Legacy Hutto, LLC at 46–47, City of Hutto, Texas v. Legacy Hutto, LLC, 2021 WL 2837745 (Tex. App.—Amarillo, July 18, 2022, pet. filed) (No. 07-21-00089-CV) (mem. op.) (citations and footnotes omitted). Legacy bases its claim on the fact that “[t]he statute does not state ‘including but not limited to’ and the Court should not read words into a statute that do not exist.” Id. at 46. But the Amarillo Court of Appeals rejected that argument, noting that the “short list of business entities set forth in 2252.908(a)(1) is not exhaustive, but merely illustrative, and thus we read it to include a limited liability company.” Legacy Hutto, LLC, 2022 Tex. App. LEXIS 4907, at *12. See also TEX. GOV’T CODE ANN. § 311.005(13), which states that “[i]ncludes’ and ‘including’ are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.” Moreover, Texas Government Code states that the “Code Construction Act (Chapter 311 of this code) applies to the construction of each provision in [the Texas Government Code], except as otherwise expressly provided by this code.” TEX. GOV’T CODE ANN. § 1.002.

\textsuperscript{145}TEX. GOV’T CODE ANN. § 2252.908(b).
that all business entities contracting with a city must submit a Form 1295 unless an applicable exception is met.\textsuperscript{146}

The exceptions are in subsection (c), which provides that the “Disclosure of Interested Parties” form does not apply to: “(1) a sponsored research contract of an institution of higher education; (2) an interagency contract of a state agency or an institution of higher education; (3) a contract related to health and human services if: (A) the value of the contract cannot be determined at the time the contract is executed; and (B) any qualified vendor is eligible for the contract; (4) a contract with a publicly traded business entity, including a wholly owned subsidiary of the business entity; (5) a contract with an electric utility, as that term is defined by Section 31.002, Utilities Code; or (6) a contract with a gas utility, as that term is defined by Section 121.001, Utilities Code.”\textsuperscript{147} Even with these provisions limiting the scope, Form 1295 is often still required.

The next question when looking to the plain language is: What is a “disclosure of interested parties”? Subsection (e) lays out the basics, providing that it is a “form prescribed by the Texas Ethics Commission that includes: (1) a list of each interested party for the contract of which the contracting business entity is aware; and (2) a written, unsworn declaration subscribed by the authorized agent of the contracting business entity as true under penalty of perjury.”\textsuperscript{148} The form, which is commonly referred to as a “Form 1295,” can be found on the Texas Ethics Commission’s website.\textsuperscript{149} It is a one-page form that must be filed online at the Texas Ethics Commission’s website and then filed with the governmental entity.\textsuperscript{150}

The statute also defines “interested party,” which is a “person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary,\textsuperscript{146} See Saum v. City of College Station, No. 10-17-00408-CV, 2020 Tex. App. LEXIS 10174, at *8 (Tex. App.—Waco Dec. 22, 2020, pet. denied) (“A city council can transact a city’s business transactions only by resolution or ordinance, by majority rule of the council.”).
\textsuperscript{147}Tex. Gov’t Code Ann. § 2252.908(c).
\textsuperscript{148} Id. § 2252.908(e).
\textsuperscript{150}Frequently Asked Questions Form 1295, TEXAS ETHICS COMMISSION, https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php#Q1 (last visited Dec. 8, 2023) (“The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.”).
adviser, or attorney for the business entity."¹⁵¹ As expressed on the Texas Ethics Commission’s website’s FAQ page, “[i]t is important to note that there are very few instances that a business will not have any interested parties.”¹⁵²

Subsection (g), the final provision of the statute, gives the Texas Ethics Commission authority to “adopt rules necessary to implement this section, prescribe the disclosure of interested parties form, and post a copy of the form on the commission’s Internet website.”¹⁵³ At this point, the Texas Ethics Commission’s FAQ page becomes more helpful than the statute because it further defines a controlling party,¹⁵⁴ an intermediary,¹⁵⁵ and provides examples.¹⁵⁶

With the knowledge of who the disclosure statute applies to and what the disclosure form is, the next reasonable question is: What does the process of submitting the form look like? Note that in Legacy Hutto, one of the issues

¹⁵¹ TEX. GOV’T CODE ANN. § 2252.908(a)(3) (emphasis added).
¹⁵³ TEX. GOV’T CODE ANN. § 2252.908(g).
¹⁵⁴ Frequently Asked Questions Form 1295, TEXAS ETHICS COMMISSION, https://www.ethics.state.tx.us/resources/FAQs/FAQ_Form1295.php#Q1 (last visited Dec. 8, 2023) (“Controlling Interest: An interested party has a controlling interest in the business entity if the interested party meets one or more of the following conditions: has an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; is a member of the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or serves as an officer of a business entity that has four or fewer officers, or serves as one of the four officers most highly compensated by a business entity that has more than four officers. Subsection (c) of this section does not apply to an officer of a publicly held business entity or its wholly owned subsidiaries.”).
¹⁵⁵ Id. (“Intermediary Interest: An interested party has an intermediary interest in a contract if the person actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, advisor, attorney, or representative of or agent for the business entity who meets all of the following conditions: receives compensation from the business entity for the person’s participation; communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and is not an employee of the business entity or of an entity with a controlling interest in the business entity.”).
¹⁵⁶ Id. (“For example, Joe is filling out a Form 1295 for his company’s contract with a governmental entity. Joe owns 50% of the company and his wife, Jane, owns 50% of the company. They have no officers or board members. Joe would list both his name and his wife’s name as controlling interests. Joe also hired a lawyer to help facilitate his company’s contract with the governmental entity. Joe paid the lawyer a fee, the lawyer contacted the governmental entity, and the lawyer is not Joe’s employee. Joe would list the lawyer as an intermediary.”).
was whether the Form 1295 was even submitted. Legacy argued that it submitted a disclosure form, but the City disputed this, arguing in its appellate brief that “an affidavit from the City Secretary indicat[ed] that Legacy had never filed an ethics disclosure form with the City” and during a hearing the City argued that a review of the Texas Ethics Commission’s website showed that Legacy did not file a disclosure. Throughout the litigation, Legacy did not concede that it missed a step—it thought it had done everything right. Is it possible that Legacy did, in fact, submit the form? For now, the questions from a statutory standpoint are simple: What should have happened procedurally and who should have submitted the form? If a business entity does submit the form, what prevents a city from asserting that it never received the form?

The Texas Ethics Commission provides the following procedure:

1. A business entity must use the internet-based application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing containing a unique certification number. In other words, a business entity that uses the Texas Ethics Commission’s website to file an application would (1) leave an electronic paper trail showing that it filed the form with the Texas Ethics Commission and (2) have a completed copy with a unique certification number for its records.

2. An authorized agent of the business entity must then sign the printed copy of the form.

3. The completed Form 1295 with the certification of filing must be filed with the governmental body or state

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159 See id. at 15–16.
160 See id. at 16–21.
162 Id. The completed form will include a certification of filing that will contain a unique certification number.
163 Id.
agency with which the business entity is entering into the contract. If this is done via certified-mail-return-receipt-requested mail or email with return-receipt-requested, for example, then the return receipt could supply evidence of submission.

4. The governmental entity or state agency must notify the Texas Ethics Commission, using the Texas Ethics Commission’s filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the contract binds all parties to the contract. This process is known as acknowledging the certificate.

5. The Texas Ethics Commission will post the acknowledged Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency.

To summarize, the process involves completing Form 1295 online, printing a copy containing a unique certification number, having an authorized agent sign it, submitting the form to the relevant governmental body, ensuring notification to the Texas Ethics Commission within thirty days of the contract’s execution, and concluding with the Texas Ethics Commission posting the acknowledged form on its website within seven business days. In Legacy Hutto, the absence of a completed form with a unique certification number in evidence suggests that that the Form 1295 was not submitted.

In conclusion, the plain language of the statute § 2252.908(d) appears to prohibit a governmental entity from engaging in contracts if it has not received the required “Disclosure of Interested Parties” form. Yet it prompts the query: Was this the legislature’s intent?

In its appellate brief before the Amarillo Court of Appeals, Legacy made an argument that it was not the legislature’s intent, specifically contending that “[u]nlike similar statutes, Section 2252.908(d) of the Texas Government

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164 Id.
165 Id.
166 Id.
167 Id. The posted acknowledged form will not contain the declaration of signature information provided by the business.
Code, does not declare a contract void for failure to submit a disclosure of interested parties.”

Legacy’s point was that if the legislature wanted to declare contracts void for a failure to submit a certificate of interested parties, it would have done so like it did with so many other statutes. Legacy referenced Texas Government Code § 2254.034, which states that a “contract entered into in violation of Sections 2254.029 through 2254.031 is void.”

The Seventh Court of Appeals did not address this argument, presumably because it decided that the plain language of the statute was not ambiguous.

While the Texas Supreme Court stated in Sullivan v. Abraham that courts “do not resort to extrinsic aides, such as legislative history, to interpret a statute that is clear and unambiguous,” Texas courts have also held that a “statute will not be given literal effect if the result would be entirely unreasonable and out of accord with justice, nor will a statute be interpreted literally if such interpretation would lead to an absurd result.” Here, the literal interpretation of the statute appears to have produced an absurd result: Legacy’s contract was held unenforceable because a one-page form was not submitted even though the governmental entity acted like it had a valid and enforceable contract by accepting $3.3 million in work performed. Moreover, a court “cannot adopt a construction that will defeat the intent of the legislature, no matter how plainly a statute is worded.” Thus, the analysis should not stop when the statute seems unambiguous if the plain meaning would result in an absurd result that defeats the legislative intent.

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169 Id. at 42–43.

170 Id. at 43; TEX. GOV’T CODE ANN. § 2254.034.


172 Allen v. Mauro, 733 S.W.2d 228, 231 (Tex. App.—El Paso 1986, no writ) (citing Young v. Young, 545 S.W.2d 551 (Tex. App.—Houston [1st Dist.] 1976, writ dism’d)). See also In re Canales, 52 S.W.3d 698, 702 (Tex. 2001) (“When we construe a statute, our primary goal is to ascertain and give effect to the legislature’s intent in enacting it. If a statute is clear and unambiguous, we need not resort to rules of construction or other aids to construe it. Even then, however, we may consider, among other things, the statute’s objectives, its legislative history, and the consequences of a particular construction.”) (footnotes omitted).

173 Mauro, 733 S.W.2d at 231 (citing Moorman v. Terrell, 202 S.W. 727 (1918)).
B. The Legislative Intent of the Disclosure of Interested Parties Statute

In addition to looking at the plain language of the statute, courts look to the legislative history for legislative intent. Legislative history includes the “actions taken and statements made during legislative consideration” such as “floor debates, committee hearings, and bill analyses as legislative history.” While no documentation such as a “Statement of Intent” accompanying HB 1295 exists, the clearest expression of the legislative intent of the “Disclosure of Interested Parties” statute comes from the primary author of H.B. 1295, Representative Capriglione, who spoke of the purpose of the bill during the House Committee on General Investigating & Ethics hearing on April 9, 2015.

Admittedly, statements of the bill’s author are generally only considered persuasive authority. But in this case, Representative Capriglione’s statements are worth considering because they were not made post-enactment or for the benefit of the press; rather, they were made in a public committee hearing as part of the legislative process.

During the committee hearing on April 9, 2015, Tom Smith spoke for the bill on behalf of Public Citizen, Inc. and made the suggestion that the

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174 In re Canales, 52 S.W.3d at 702.
175 Lee v. Mitchell, 23 S.W.3d 209, 213 (Tex. App.—Dallas 2000, pet. denied) (citing Quick v. City of Austin, 7 S.W.3d 109, 123 (Tex. 1998)).
177 Tex. Health Presbyterian Hosp. of Denton v. D.A., 569 S.W.3d 126, 136–37 (Tex. 2018) (“An individual legislator’s statements—even those of the bill’s author or sponsor—do not and cannot describe the understandings, intentions, or motives of the many other legislators who vote in favor of a bill.”); but see AT&T Commc’ns of Tex., L.P. v. Sw. Bell Tel. Co., 186 S.W.3d 517, 529 n.60 (Tex. 2006) (citing Gen. Chem. Corp. v. De La Lastra, 852 S.W.2d 916, 923 (Tex. 1993) (“The intent of an individual legislator, even a statute’s principal author, is not legislative history controlling the construction to be given a statute. It is at most persuasive authority as might be given the comments of any learned scholar of the subject.”)).
178 Courts have considered statements made by a legislator in committee hearings. See Marcus Cable Assocs., L.P. v. Krohn, 90 S.W.3d 697, 707 (Tex. 2002) (“Statements were repeatedly made in hearings indicating that section 181.102 was intended to encompass only public easements.”). Cohen v. Rains, 745 S.W.2d 949, 953 (Tex. App.—Houston [14th Dist.] 1988, no writ) (“While the views of legislative committees as to the intended effect of a statute are not controlling, their views are entitled to great respect and some weight in arriving at the correct interpretation.”).
disclosure form be required to be posted before the city council could vote on the contract instead of after, as it was written when passed in 2015. In closing on the bill, one of Representative Capriglione’s remarks was in response to Tom Smith’s suggestion. Capriglione said:

While I think it’s a good point to talk about putting in this disclosure information in before things are signed, a lot of times the things may never get signed, right, and so that would put a lot of information on contracts that are only half done. Again, this isn’t to stop anyone from getting into contracts—it’s just to say who has the contracts. It will list all of those.

Then, in response to a follow up question from a committee member on the disclosure form, Representative Capriglione said:

What I really wanted to do, and the intent of this bill, is to say ‘okay, you got into a contract. Fine, no problem.’ We just want to know on the Texas Ethics’ website a list of all interested parties.

These statements show that the intent of § 2252.908 was not to affect the “properly executed” prong of the governmental immunity analysis. Instead, the legislative intent was to provide full transparency to the public for transactions between governmental entities and private businesses.

C. The Effects of the 2023 Legislative Updates to § 2252.908

Following the Legacy Hutto decision, the Texas Legislature amended § 2252.908 by passing HB 1817. The purpose of the amendment was clear: prevent the Legacy Hutto scenario from occurring again. In fact, eight years after authoring HB 1295, Representative Capriglione authored the amendment and drafted an official “Statement of Intent” for HB 1817 that

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180 Id. at 42:40–43:02 (emphasis added).
181 Id. at 44:00–44:13 (emphasis added).
explicitly referenced the *Legacy Hutto* case. The “Statement of Intent” states:

In 2015, the legislature enacted legislation that required governmental entities to file a disclosure of interested parties, otherwise known as a Form 1295, with the Texas Ethics Commission for certain contracts. In 2022, a development company, Legacy Hutto LLC, sued the City of Hutto for breach of contract. The judge found that the city had not verified whether a Form 1295 was submitted and on file, therefore not complying with state government transparency laws. As such, the judge found that the contract had not been properly executed. With this ruling, the potential now exists for any government contract without a Form 1295 on file to be found void. H.B. 1817 seeks to prevent this from occurring by updating the disclosure of interested parties statute to allow for a cure period of 10 business days if a Form 1295 is found to not be on file. H.B. 1817 amends current law relating to the validity of a contract for which a disclosure of interested parties is required.

HB 1817, Section 1 amended Section 2252.908 by adding Subsection (f-1) to the statute. Subsection (f-1) is prospective because it applies to the future, allowing a governmental entity to void a contract if it provides notice of the business entity’s failure to provide the Form 1295 and the business entity does not submit the Form 1295 within ten days. Specifically, Subsection (f-1) states:

(f-1) A contract described by Subsection (b) entered into by a governmental entity or state agency is voidable for failure to provide the disclosure of interested parties required by this section only if:

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184 Id.
185 Id.
187 Id.
(1) the governmental entity or state agency submits to the business entity written notice of the business entity’s failure to provide the required disclosure; and

(2) the business entity fails to submit to the governmental entity or state agency the required disclosure on or before the 10th business day after the date the business entity receives the written notice under Subdivision (1). 188

In effect, a statute designed to require transparency has mutated into a statute allowing governmental entities to void contracts in an albeit narrow range of circumstances. For example, suppose a business entity that failed to submit the Form 1295 is given notice by the governmental entity but the business entity still does not provide Form 1295 within ten days. Perhaps this happens because the notice was forwarded to the business owner who simply put it on their desk to read later, buried it under other paperwork, and failed to submit the Form 1295 within ten days. 189 Though originally not intended to make a contract unenforceable, the statute now allows the contract in this hypothetical to be voided by the governmental entity.

There are a few potential ways to address the issue of contracts becoming void due to a failure to file a Form 1295 within the statutory timeframe. First, the Texas Ethics Commission could publish a sample “Notice of Business Entity’s Failure to Provide Required Disclosure Form” (i.e., a Form 1817)

188 Id.

189 This is factually what happened in Craddock v. Sunshine Bus Lines, Inc., 133 S.W.2d 124, 124–26 (Comm’n App. 1939) (“[T]he envelope containing the letter and citations was opened by a lady employee in the claims department and by her passed on to a Mr. Morrison, who was in charge of that department, along with other mail received on that day; that Morrison checked the letter in such manner as to indicate that it related to urgent business and was to be returned to his desk with the files on the case either that afternoon or the next day; that due to a recent hail and wind storm in Dallas, which produced 400 claims against the company, the claims department was running behind with its work, and in order to meet the situation thus created the important mail was separated from that which was not so important and the former received first attention; that in some unexplained manner, the letter transmitting the citation became mixed with the general, or less important mail after being checked by Morrison, and was not discovered until September 10, the day upon which the default judgment was rendered in Van Zandt county. . . . Applying the rule announced in the Dowell-Winters case and followed in the other cited cases to the facts of the case before us, the certain conclusion is reached that the trial court should have granted the motion of the defendant to set aside the default judgment and reinstate the case on its docket. The failure to answer was on account of a mistake and was not intentional. The press of business resulting from the storm certainly constituted some excuse for the oversight.”).
that gives businesses entities clear, conspicuous notice that their failure to submit a Form 1295 within ten days will result in their contract becoming voidable by the governmental entity. Second, attorneys representing business entities that contract with governmental entities could become more familiar with the *Legacy Hutto* decision and with § 2252.908 in efforts to prevent their clients from succumbing to this harsh result. Similarly, attorneys could be proactive, explaining the Form 1295 during the negotiation phase of contracting with governmental entities to prevent this from happening. Third, courts could recognize an equitable exception to a business’s failure to timely respond to the notice given under § 2252.908(f-1). Specifically, courts could utilize the *Craddock* factors to determine whether it would be fair to give the business entity more time to file the Form 1295. Under this approach, courts could find an equitable exception to late Form 1295 submissions where (1) the failure to timely respond to notice with the Form 1295 was not intentional or the result of conscious indifference, but was the result of an accident or mistake, (2) the response to the plea of jurisdiction sets up a prima facia case for breach of contract against the governmental entity, and (3) denying the plea to the jurisdiction will occasion no delay or otherwise injure the governmental entity.

Ultimately, the only way to truly restore § 2252.908 to its original intent of providing transparency in contracts between governmental entities and business entities is for the legislature to revise the statute. Specifically, the legislature could clarify that a contract that is otherwise properly executed by a governmental entity is not voidable due to the business entity’s failure to submit a Form 1295. The issue, however, is that a statute that does not provide legal ramifications for noncompliance has no enforcement mechanism. In other words, if the legislature were to remove the provisions making the contracts voidable for failure to comply, there must be some other consequence for not complying with the “Disclosure of Interested Parties”

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190 *Id.* at 393 (“A default judgment should be set aside and a new trial ordered in any case in which the failure of the defendant to answer before judgment was not intentional, or the result of conscious indifference on his part, but was due to a mistake or an accident; provided the motion for a new trial sets up a meritorious defense and is filed at a time when the granting thereof will occasion no delay or otherwise work an injury to the plaintiff. This is a just rule.”).

191 *See* B. Gregg Price, P.C. *v.* Series 1 – Virage Master LP, 661 S.W.3d 419, 423 (Tex. 2023) (“The rule of *Craddock v. Sunshine Bus Lines* entitles a defaulting party to a new trial when: ‘(1) the failure to appear was not intentional or the result of conscious indifference, but was the result of an accident or mistake, (2) the motion for new trial sets up a meritorious defense, and (3) granting the motion will occasion no delay or otherwise injure the plaintiff.’”).
statute. While it is beyond the scope of this Note to examine possible alternative consequences of noncompliance, it is worth pointing out that, in 2017, the Texas House attempted to add a “civil penalty” provision to § 2252.908. Though the provision ultimately did not pass, it would have made business entities that failed to submit a “Disclosure of Interested Parties” form pay a civil penalty of $500 for the first day the violation occurs and $100 for each additional day that violation occurred, capped at $10,000. For some businesses, namely small businesses, this may have been an incentive to comply with the “Disclosure of Interested Parties” statute but would otherwise provide a price tag for business to buy their way out of this transparency requirement.

Sections 2 and 3 of HB 1817 were enacted to deal with existing Form 1295 issues. Section 2 of HB 1817 is retroactive, applying to any suit pending on June 1, 2023, in which the validity of the contract is challenged. Specifically, Section 2 states:

A court in which a suit challenging the validity of a contract described by Section 2252.908(b), Government Code, is pending on the effective date of this Act may require the governmental entity or state agency to provide the written notice required under Section 2252.908(f–1), Government Code, as added by this Act, if the court finds that failure to enforce that requirement would cause an inequitable or unjust result for the parties to the suit.

In effect, Section 2 is powerful. If a suit was pending on June 1, 2023, and the court finds that not enforcing the requirement for the governmental entity to provide written notice would result in an unfair or unjust result, the court has discretion to require the entity to provide written notice as specified in Section 2252.908(f–1). The point of Section 2 is to require the trial court to consider whether the failure of the City of Hutto to provide written notice to Legacy Hutto, LLC, would result in an inequitable or unjust result. Because Legacy Hutto’s entire suit was dismissed on the grounds that the Form 1295 was not submitted as required by § 2252.908 to waive governmental immunity under § 271.152, the court would most likely find

\[193\] Id.
\[195\] Id.
that the lack of written notice under (f-1) would cause an inequitable or unjust result. Recently, the Texas Supreme Court issued a per curiam opinion that “grant[ed] the [parties’] petitions for review, vacate[d] the court of appeals’ judgment, and remand[ed] the case to the district court ‘for further proceedings in light of changes in the law.’” Because of this amendment, Legacy Hutto will have another opportunity to litigate its breach of contract claim in the trial court.

Section 3 of HB 1817 is retrospective, applying the presumption of validity to all other contracts that could be challenged on the basis of § 2252.908. Specifically, Section 3 of HB 1817 states:

A contract described by Section 2252.908(b), Government Code, that was executed before the effective date of this Act is presumed to have been properly executed in accordance with Section 2252.908, Government Code, if an action to void or invalidate the contract has not been filed with a court in this state before the effective date of this Act.\(^{197}\)

In other words, Section 3 of HB 1817 activates the presumption that contracts between business entities and governmental entities executed before June 1, 2023, were properly executed under § 2252.908. Collectively, these provisions within HB 1817 lay the groundwork for a fresh start for previously executed contracts that are being challenged or could be challenged on § 2252.908 grounds. Essentially, any business owner concerned about not timely submitting a Form 1295 prior to June 1, 2023, can now find some peace of mind in that its contract will not be voided for lack of a Form 1295 submission.

CONCLUSION

Even before the Seventh Court of Appeals’ decision in Legacy Hutto, entering into an enforceable agreement that would waive governmental entity immunity was not easy. The waiver of immunity provision in § 271.152 required a contract to satisfy the five elements in § 271.151. This comment addressed the fifth requirement that contracts be “properly executed on behalf


of the local governmental entity,” specifically in the context of Texas Government Code § 2252.908 as it applies to the Form 1295.

First, this Note looked at the first decision ever discussing § 2252.908—i.e., *Legacy Hutto*—which held that the failure to submit a Form 1295 made the contract unenforceable because it was not “properly executed.” Then, this Note addressed the earliest concerns that other businesses with existing contracts with governmental entities were facing, concluding with good news and bad news. The bad news was that many equitable remedies such as quantum meruit would not help a business against a governmental entity with immunity. This bad news should serve as a gentle reminder that contracting with governmental entities is complex. The good news, however, was the legislature amended § 2252.908 and declared those potentially voidable pre-existing contracts enforceable with respect to the § 2252.908 issue.

But with the 2023 legislative update, *Legacy Hutto*’s legacy is that the lack of a one-page disclosure form, which was never intended to affect the “properly executed” component of § 271.151 or make a contract unenforceable, can now be used as a tool to void contracts when the business entity fails to submit the Form 1295 within ten days of notice. Until the legislature amends § 2252.908 or the courts recognize an equitable exception, the potential for governmental entities to void contracts in albeit limited circumstances exists where the legislature originally never intended for it to exist.