

# Sovereign Immunity: Is the King Really Dead?

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# The State is King!

Mel Brooks –  
*History of the World Part  
One*

“It’s Good to be the  
King!”

Tom Petty – It’s Good To  
Be King

It’s Good to Be King,  
And Have your Own Way,  
Get a Feeling of Peace,  
At the End of the Day



# Is the King Really Dead?

Billy Crystal as “Miracle Max”  
in *The Princess Bride*



“Well, it just so happens that your friend here is only MOSTLY dead. There’s a big difference between MOSTLY dead and ALL dead. Now, MOSTLY dead is slightly alive.”



# If the King Is Dead, How Can we Get Inside the Castle?

- 1<sup>st</sup> – Contractor must follow all contractual notice, presentment, and any ADR provision
- 2<sup>nd</sup> – Report
- 3<sup>rd</sup> – File your lawsuit



# Sly & the Family Stone



“Different strokes for  
different folks”

Everyday People



# Statutory History

- County government waiver (Local Government Code §262.007 (2003))
- All local governments (Local Government Code § 271.152 *et seq.*) (2005)
- State governmental entities\* (HB 586) (2013)

\*(except TxDOT)



# Three Different Statutes ...

- What contracts do they cover?
  - Three different answers



# Statutory Differences: *Types of Contracts*

Type of Governmental Entity	Type of Contracts Exempted	Notes/Applicability
Counties (Ch. 262)	Engineering, architectural construction services	
All non-state entities ( Ch. 271)	Any obligation > \$50,000	
State Entities, except TxDOT (HB 586)	For “goods or services”	Engineering, architectural construction services where “amount in controversy” is > \$250,000
TxDOT	(none)	





# Three Different Statutes ...

- What damages are available?
  - Three different answers



# The Rolling Stones said it best:

- “You Can’t Always Get What You Want, but if you try sometimes, you might find, you get what you need!”
- I Can’t Get No Satisfaction



# What Damages are Recoverable?

Statute	Recoverable Damages				
	Contract Balance	Owner Caused Delays / Accel'n	Change Orders or Add'l Work	Atty's Fees	Interest
Ch. 271	Yes	Yes	Yes ("directed to perform")	Reas. & Necess.	Yes, incl. Gov't. Code Ch. 225 I
Ch. 262	Yes	Yes	Yes	Reas. & Necess.	As allowed by Law
HB 586	Yes	"If contract expressly provides for that comp."	"amount owed for written change orders"	If contract expressly provides that atty' fees available to ALL parties	As allowed by contract or Finance Code §304

# Steve Winwood



“Be thankful for your  
problem  
It’s a gift in disguise  
It’s your chance to  
change”

Steve Winwood,  
Opportunity

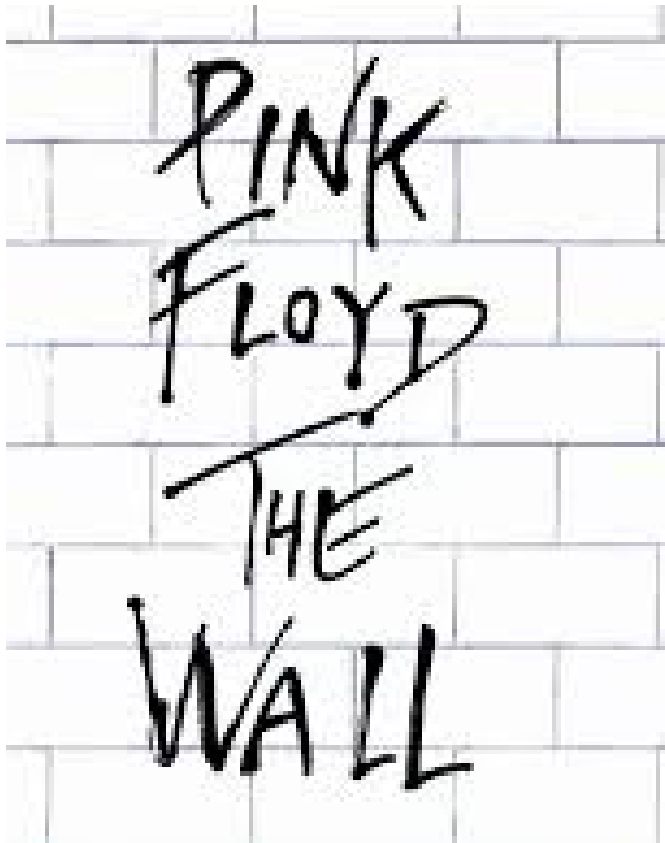


# Is the King Really Dead?

## Other Defenses



# Pink Floyd



“All in all it’s  
just another brick in  
the wall.”

Another Brick in the  
Wall (Part II)



# Some of the Bricks in the Wall

- No Damages for Delay
- Contractor acceptance of the site
- Contractor responsibility for site conditions
- Contractor responsibility for plan review



# Caveat Contractor

- Or
- “RTFC”





# The Door is Open – or... as Lyle Lovett said:

## Good Intentions

- “She Wasn’t Good,  
But she had Good  
Intentions”

## Her First Mistake

- “It was then I knew I  
had made my first  
mistake!”



# Can we Improve on HB 586?

- Remove the \$250,000 threshold
- Eliminate the report requirement
- Expand recovery to allow additional work not reflected on written change orders
- Allow recovery of attorney's fees



- Questions?
- Thanks!



“You’ve come to the end of the line”

End of the Line

Bob Wills & Johnny Gimble

