

1 AN ACT

2 relating to the waiver of sovereign immunity for certain design and
3 construction claims arising under written contracts with state
4 agencies.

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

6 SECTION 1. Title 5, Civil Practice and Remedies Code, is
7 amended by adding Chapter 114 to read as follows:

8 CHAPTER 114. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN
9 CONTRACTS WITH STATE AGENCIES

10 Sec. 114.001. DEFINITIONS. In this chapter:

11 (1) "Adjudication" of a claim means the bringing of a
12 civil suit and prosecution to final judgment in county or state
13 court.

14 (2) "Contract subject to this chapter" means a written
15 contract stating the essential terms of the agreement for providing
16 goods or services to the state agency that is properly executed on
17 behalf of the state agency. The term does not include a contract
18 that is subject to Section 201.112, Transportation Code.

19 (3) "State agency" means an agency, department,
20 commission, bureau, board, office, council, court, or other entity
21 that is in any branch of state government and that is created by the
22 constitution or a statute of this state, including a university
23 system or a system of higher education. The term does not include a
24 county, municipality, court of a county or municipality, special

1 purpose district, or other political subdivision of this state.

2 Sec. 114.002. APPLICABILITY. This chapter applies only to
3 a claim for breach of a written contract for engineering,
4 architectural, or construction services or for materials related to
5 engineering, architectural, or construction services brought by a
6 party to the written contract, in which the amount in controversy is
7 not less than \$250,000, excluding penalties, costs, expenses,
8 prejudgment interest, and attorney's fees.

9 Sec. 114.003. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN
10 CLAIMS. A state agency that is authorized by statute or the
11 constitution to enter into a contract and that enters into a
12 contract subject to this chapter waives sovereign immunity to suit
13 for the purpose of adjudicating a claim for breach of an express
14 provision of the contract, subject to the terms and conditions of
15 this chapter.

16 Sec. 114.004. LIMITATIONS ON ADJUDICATION AWARDS. (a) The
17 total amount of money awarded in an adjudication brought against a
18 state agency for breach of an express provision of a contract
19 subject to this chapter is limited to the following:

20 (1) the balance due and owed by the state agency under
21 the contract as it may have been amended, including any amount owed
22 as compensation for the increased cost to perform the work as a
23 direct result of owner-caused delays or acceleration if the
24 contract expressly provides for that compensation;

25 (2) the amount owed for written change orders;

26 (3) reasonable and necessary attorney's fees based on
27 an hourly rate that are equitable and just if the contract expressly

1 provides that recovery of attorney's fees is available to all
2 parties to the contract; and

3 (4) interest at the rate specified by the contract or,
4 if a rate is not specified, the rate for postjudgment interest under
5 Section 304.003(c), Finance Code, but not to exceed 10 percent.

6 (b) Damages awarded in an adjudication brought against a
7 state agency arising under a contract subject to this chapter may
8 not include:

9 (1) consequential damages;

10 (2) exemplary damages; or

11 (3) damages for unabsorbed home office overhead.

12 Sec. 114.005. CONTRACTUAL ADJUDICATION PROCEDURES
13 ENFORCEABLE. Adjudication procedures, including requirements for
14 serving notices or engaging in alternative dispute resolution
15 proceedings before bringing a suit or an arbitration proceeding,
16 that are stated in the contract subject to this chapter or that are
17 established by the state agency and expressly incorporated into the
18 contract are enforceable, except to the extent those procedures
19 conflict with the terms of this chapter.

20 Sec. 114.006. NO WAIVER OF OTHER DEFENSES. This chapter
21 does not waive a defense or a limitation on damages available to a
22 party to a contract, other than a bar against suit based on
23 sovereign immunity.

24 Sec. 114.007. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL
25 COURT. This chapter does not waive sovereign immunity to suit in
26 federal court.

27 Sec. 114.008. NO WAIVER OF IMMUNITY TO SUIT FOR TORT

1 LIABILITY. This chapter does not waive sovereign immunity to a
2 claim arising from a cause of action for negligence, fraud,
3 tortious interference with a contract, or any other tort.

4 Sec. 114.009. EMPLOYMENT CONTRACTS EXEMPT. This chapter
5 does not apply to an employment contract between a state agency and
6 an employee of that agency.

7 Sec. 114.010. VENUE. A suit under this chapter may be
8 brought in a district court in:

9 (1) a county in which the events or omissions giving
10 rise to the claim occurred; or

11 (2) a county in which the principal office of the state
12 agency is located.

13 Sec. 114.011. LIMITATION ON REMEDIES. Satisfaction and
14 payment of any judgment under this chapter may not be paid from
15 funds appropriated to the state agency from general revenue unless
16 the funds are specifically appropriated for that purpose. Property
17 of the state or any agency, department, or office of the state is
18 not subject to seizure, attachment, garnishment, or any other
19 creditors' remedy to satisfy a judgment taken under this chapter.

20 Sec. 114.012. EXCLUSIVE REMEDY. A claim to which this
21 chapter applies may not be brought under Chapter 2260, Government
22 Code, against the state or a unit of state government as defined by
23 Section 2260.001, Government Code.

24 Sec. 114.013. REPORT. Before January 1 of each
25 even-numbered year, each state agency shall report to the governor,
26 the comptroller, and each house of the legislature the cost of
27 defense to the state agency and the office of the attorney general

1 in an adjudication brought against the agency under a contract
2 subject to this chapter. Included in the report shall be the amount
3 claimed in any adjudication pending on the date of the report.

4 SECTION 2. Section 2260.002, Government Code, is amended to
5 read as follows:

6 Sec. 2260.002. APPLICABILITY. This chapter does not apply
7 to:

8 (1) a claim for personal injury or wrongful death
9 arising from the breach of a contract; ~~or~~

10 (2) a contract executed or awarded on or before August
11 30, 1999; or

12 (3) a claim for breach of contract to which Chapter
13 114, Civil Practice and Remedies Code, applies.

14 SECTION 3. (a) Chapter 114, Civil Practice and Remedies
15 Code, as added by this Act, applies only to a claim arising under a
16 contract executed on or after September 1, 2013. A claim that
17 arises under a contract executed before September 1, 2013, is
18 governed by the law applicable to the claim immediately before the
19 effective date of this Act, and that law is continued in effect for
20 that purpose.

21 (b) Nothing in this Act is intended to create, rescind,
22 expand, or limit any waiver of sovereign immunity to suit
23 applicable to any contract executed before September 1, 2013.

24 SECTION 4. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 586 was passed by the House on May 10, 2013, by the following vote: Yeas 132, Nays 5, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 586 on May 24, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 586 on May 26, 2013, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 586

I certify that H.B. No. 586 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 29, Nays 2; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 586 on May 26, 2013, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor