AN ACT

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

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

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

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

Sec. 114.001. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

(2) the amount owed for written change orders;

(3) reasonable and necessary attorney's fees based on an hourly rate that are equitable and just if the contract expressly
provides that recovery of attorney's fees is available to all parties to the contract; and

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

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

   (1) consequential damages;

   (2) exemplary damages; or

   (3) damages for unabsorbed home office overhead.

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

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

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

Sec. 114.008. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
LIABILITY. This chapter does not waive sovereign immunity to a
claim arising from a cause of action for negligence, fraud,
tortious interference with a contract, or any other tort.

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

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

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

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

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

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

Sec. 114.013. REPORT. Before January 1 of each
even-numbered year, each state agency shall report to the governor,
the comptroller, and each house of the legislature the cost of
defense to the state agency and the office of the attorney general
in an adjudication brought against the agency under a contract subject to this chapter. Included in the report shall be the amount claimed in any adjudication pending on the date of the report.

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

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

(1) a claim for personal injury or wrongful death arising from the breach of a contract; [added]

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

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

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

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

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

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Secretary of the Senate

APPROVED: _________________

Date

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Governor