

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 25, 2013
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 586 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Dewell
Dewell

Workman
Workman

Duncan
Duncan

Callegari
Callegari

Elitife
Elitife

Farrar
Farrar

Lucio
Lucio

Leach
Leach

Van der Putte
On the part of the Senate

Mohr
On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 586

A BILL TO BE ENTITLED

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

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.

House Bill 586
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Adds Chapter 114, Title 5, Civil Practice and Remedies Code, relating to adjudication of claims arising under written contracts with state agencies.

Sec. 114.001. DEFINITIONS. Defines "adjudication," "contract subject to this chapter," and "state agency."

Sec. 114.002. APPLICABILITY. Chapter 114 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.

Sec. 114.003. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS.

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 *such* compensation;

(2) the amount owed for written change orders *or additional work required to carry out the contract*;

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

SENATE VERSION (IE)

SECTION 1. Adds Chapter 114, Title 5, Civil Practice and Remedies Code, relating to adjudication of claims arising under written contracts with state agencies.

Sec. 114.001. Same as House version except *specifies that specifies that "contract subject to this chapter" does not include a contract that is subject to Section 201.112, Transportation Code.*

Sec. 114.002. Same as House version except *specifies that the claim is one in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, pre-judgment interest, and attorney's fees.* [FA1(1)]

Sec. 114.003. Same as House version.

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; [FA2]

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

CONFERENCE

SECTION 1. Adds Chapter 114, Title 5, Civil Practice and Remedies Code, relating to adjudication of claims arising under written contracts with state agencies.

Sec. 114.001. Same as Senate version.

Sec. 114.002. Substantially the same as Senate version.

Sec. 114.003. Same as House version.

Sec. 114.004. Same as Senate version.

House Bill 586
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

provides for *such* recovery; 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.

Secs. 114.005 – 114.010.

Sec. 114.011. LIMITATION ON REMEDIES. Satisfaction and payment of a judgment under this chapter *may occur only on legislative appropriation of funds in accordance with the Texas Constitution and the statutes of this state.* 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. *An entity described by* this chapter may not *bring suit* 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.

SENATE VERSION (IE)

provides *that* recovery *of attorney's fees is available to all parties to the contract;* and [FA3]

(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.

Secs. 114.005 – 114.010. Same as House version.

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. [FA1(2)]

Sec. 114.013. Same as House version.

CONFERENCE

Secs. 114.005. – 114.010. Same as House version.

Sec. 114.011. Same as Senate version.

Sec. 114.012. Same as Senate version.

Sec. 114.013. Same as House version.

House Bill 586
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
SECTION 2. Amends Section 2260.002, Government Code, to provide that provisions relating to resolution of certain contract claims against the state do not apply to a claim for breach of contract to which Chapter 114, Civil Practice and Remedies Code, applies.	SECTION 2. Same as House version.	SECTION 2. Same as House version.
SECTION 3. Sets out saving provision and provides that bill does not intend to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to any contract executed before September 1, 2013.	SECTION 3. Same as House version.	SECTION 3. Same as House version.
SECTION 4. Effective date.	SECTION 4. Same as House version.	SECTION 4. Same as House version.
No equivalent provision.	SECTION __. Section 2001.052, Government Code, is amended relating to contents of notice in contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Section 2001.054, Government Code, is amended by adding Subsections (c-1) and (e) relating to contested cases regarding licenses. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Subsections (a) and (e), Section 2001.141, Government Code, are amended relating to the form of a decision, findings of fact, and conclusions of law regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Section 2001.142, Government Code, is amended relating to notification of decisions and orders regarding contested cases. [FA1,3rd]	Same as House version.

House Bill 586
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION (IE)	CONFERENCE
No equivalent provision.	SECTION __. The heading to Section 2001.143, Government Code, is amended relating to the time of a decision regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Subsections (a) and (b), Section 2001.143, Government Code, are amended relating to the time of a decision regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Section 2001.144, Government Code, is amended relating to when decision or orders are final regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Subsection (b), Section 2001.145, Government Code, is amended relating to motions for rehearing and prerequisites to appeal regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Section 2001.146, Government Code, is amended by amending Subsections (a), (b), (c), (e), and (f) and adding Subsections (g), (h), and (i) relating to motions for rehearing and related procedures regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Subsection (a), Section 2001.176, Government Code, is amended relating to a petition initiating judicial review regarding contested cases. [FA1,3rd]	Same as House version.
No equivalent provision.	SECTION __. Saving provision. [FA1,3rd]	Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 25, 2013

TO: Honorable David Dewhurst, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB586 by Workman (Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to waive sovereign immunity for the state related to a breach of contract for engineering, architectural, or construction services or for materials related to those professional services.

The Office of the Attorney General indicates that additional lawsuits could arise against the state upon enactment of the bill.

The OAG estimates that an additional 5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload. However, it is anticipated that any costs associated with the bill could be absorbed within existing resources.

The Office of Court Administration indicates that any costs associated with the bill to the court system could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

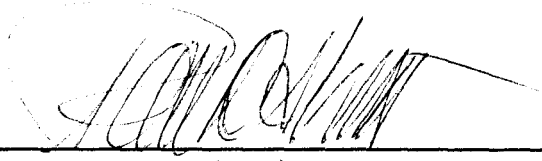
Source Agencies: 302 Office of the Attorney General, 212 Office of Court Administration,
Texas Judicial Council

LBB Staff: UP, AG, JM, CL, EP, JP

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 586 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)

5-25-13

(date)