

- SUBJECT:** Waiving sovereign immunity for certain claims related to state contracts
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, S. Thompson  
0 nays  
2 absent — Hernandez Luna, Raymond
- WITNESSES:** For — Robert Cave, SureTec; Todd Hewitt; Tom Kader, SEDACO Inc.; Andrew Koebel; Corbin Van Arsdale, AGC-Texas Building Branch; Marc Young; (*Registering, but not testifying:* Jon Fisher, Associated Builders and Contractors of Texas; David Lancaster, Texas Society of Architects; Russel Lenz, Associated General Contractors of Texas, Highway, Heavy, Utilities and Industrial Branch; David A. Marwitz, Texas Surety Federation; Peyton McKnight, American Council of Engineering Companies of Texas; Jim Sewell; Michael White, Texas Construction Association)  
  
Against — (*Registered, but did not testify:* T.J. Patterson, City of Fort Worth)  
  
On — David Mattax, Office of the Attorney General; Renee Rusch and Tom Walston, State Office of Administrative Hearings; (*Registered, but did not testify:* Brad Parker, TTLA)
- BACKGROUND:** Title 5 of the Civil Practice and Remedies Code addresses governmental liability. Ch. 2260 of the Government Code applies to the resolution of certain contract claims against the state. Sec. 2260.002 excludes from the chapter personal injury or wrongful death claims arising from contract breaches and contracts executed or awarded before August 30, 1999.
- DIGEST:** CSHB 586 would add chapter 114 to Title 5 of the Civil Practice and Remedies Code governing lawsuit claims that stemmed from the breach of a written contract for engineering, architectural, or construction services with a state agency. The bill would not apply to an employment contract between a state agency and an employee of that agency. Under the bill, a state agency that was legally authorized to enter into contracts for these

services and did so would waive sovereign immunity to suit for breach of express provisions of the contract.

The bill would limit awards to:

- the balance due and owed by the state agency under 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 provided for such compensation;
- the amount owed for written change orders or additional work required to carry out the contract;
- reasonable and necessary attorney's fees based on an hourly rate that were equitable and just if the contract expressly provided for such recovery; and
- interest at the rate specified by the contract or, if a rate was not specified, the rate for postjudgment interest as allowed by state law if the interest rate or price differential was not in the contract, up to 10 percent.

Damages could not include consequential damages, exemplary damages, or damages for unabsorbed home-office overhead. The bill would not waive a defense or a limitation on damages available to a party to the contract, except the bar to a suit based on sovereign immunity. CSHB 586 would not waive sovereign immunity to suit in federal court or sovereign immunity to suits based on negligence, fraud, tortious interference with a contract, or any other tort.

Unless the procedures conflicted with provisions in the bill, contractual adjudication procedures, including requirements for serving notices, alternative dispute resolution proceedings, or arbitration proceedings would be enforceable under CSHB 586. The bill would allow suits to be filed in a district court in a county where the events or omissions underlying the claim occurred or in a county in which the principal office of the state agency was located.

Under the bill, satisfaction and payment of a judgment would depend on legislative appropriation of funds as allowed by law. The bill would not allow property of the state or any agency, department, or office of the state to be used as a creditors' remedy to satisfy a judgment under the bill.

Ch. 2260 of Government Code would not apply to claims for breach of

contract covered by the new ch. 114 created by the bill.

Ch. 114 of Government Code created by the bill would apply only to a claim from a contract executed on or after September 1, 2013. Nothing in the act would be intended to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to any contract executed before September 1, 2013.

The bill would take effect on September 1, 2013.

**SUPPORTERS  
SAY:**

CSHB 586 would ensure fairness and accountability in state contracts for engineering, architectural design, or construction services. No other governmental entity in Texas has the same power of sovereign immunity that current law grants to state agencies. Some state agencies have used sovereign immunity to take advantage of businesses under state contracts. CSHB 586 would reduce this potential for abuse.

Under current law, the State Office of Administrative Hearings can only provide relief for damages up to \$250,000. Claims with damages above \$250,000 must ask the Legislature to appropriate funds for payment of the remainder of the claim. Often claims with damages below \$250,000 have to be settled for less because the state agency lacks appropriated funds to sufficiently settle the claim.

The precedent has already been set for removing sovereign immunity for other governmental entities such as counties, municipalities, and school districts. Setting that precedent has not resulted in abuse. To the contrary, if sovereign immunity were removed, state agencies would be much more willing to settle a claim before it could rise to the level of a suit. Contractors with governmental entities would provide better pricing if they know that sovereign immunity on certain claims does not exist, which would ultimately save the state money instead of costing the state more.

The bill would not incur any costs to the state and does not have a fiscal note.

**OPPONENTS  
SAY:**

The immunity of the state should not be waived any further than it already has been. CSHB 586 would set a precedent for waiving sovereign immunity for all state contracts and could open the floodgates to unnecessary suits against state agencies.