

BILL ANALYSIS

Senate Research Center

H.B. 586
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Although the State of Texas and its agencies are generally immune from suit under the doctrine of sovereign immunity, statutory provisions allow the adjudication of certain contract claims against state governmental agencies if the claim is for less than a specified dollar amount in damages. Concerned parties assert that for a breach of contract claim that seeks a greater amount in damages, an aggrieved party's only recourse is to seek a waiver of sovereign immunity from the legislature because the law does not adequately address procedures for adjudicating such claims.

H.B. 586 amends current law relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 114, as follows:

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

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

Sec. 114.002. APPLICABILITY. Provides that 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.

Sec. 114.003. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. Provides that 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) Provides that 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 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) (relating to providing that the post judgment interest rate is the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation or five percent, whichever is more, or 15 percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System is more than 15 percent), Finance Code, but not to exceed 10 percent.

(b) Prohibits damages awarded in an adjudication brought against a state agency arising under a contract subject to this chapter from including consequential damages, exemplary damages, or damages for unabsorbed home office overhead.

Sec. 114.005. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE. Provides that 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. Provides that 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. Provides that this chapter does not waive sovereign immunity to suit in federal court.

Sec. 114.008. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. Provides that 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. Provides that this chapter does not apply to an employment contract between a state agency and an employee of that agency.

Sec. 114.010. VENUE. Authorizes a suit under this chapter to be brought in a district court in a county in which the events or omissions giving rise to the claim occurred, or a county in which the principal office of the state agency is located.

Sec. 114.011. LIMITATION ON REMEDIES. Authorizes satisfaction and payment of a judgment under this chapter to occur only on legislative appropriation of funds in accordance with the Texas Constitution and the statutes of this state. Provides that 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. Prohibits an entity described by this chapter from bringing suit under Chapter 2260 (Resolution of Certain Contract Claims Against

the State), Government Code, against the state or a unit of state government as defined by Section 2260.001 (Definitions), Government Code.

Sec. 114.013. REPORT. Requires each state agency, before January 1 of each even-numbered year, to report to the governor, the comptroller of public accounts of the State of Texas, 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. Requires that the report include the amount claimed in any adjudication pending on the date of the report.

SECTION 2. Amends Section 2260.002, Government Code, as follows:

Sec. 2260.002. APPLICABILITY. Provides that this chapter does not apply to:

(1)-(2) Makes nonsubstantive changes; or

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

SECTION 3. (a) Provides that 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. Provides that 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) Provides that 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. Effective date: September 1, 2013.