

Amend CSSB 1811 (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN
CONTRACTS WITH STATE AGENCIES

SECTION _____.01. 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 and includes the bringing of an arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract subject to this chapter for the arbitration proceedings.

(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.

(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 contract in which the matter in controversy exceeds \$250,000, exclusive of interest.

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 or implied 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 or implied 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;

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

(3) interest as allowed by law.

(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, except as allowed under Subsection (a)(1);

(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.

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. NO RECOVERY OF ATTORNEY'S FEES. Attorney's fees incurred by a state agency or any other party in the adjudication of a claim by or against a state agency shall not be awarded to any party in the adjudication unless the state agency has entered into a written agreement that expressly authorizes the prevailing party in the adjudication to recover its reasonable and necessary attorney's fees.

Sec. 114.011. 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) Travis County.

SECTION ____ .02. 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; ~~[or]~~

(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 ____ .03. (a) Chapter 114, Civil Practice and Remedies Code, as added by this article, applies only to a claim arising under a contract executed on or after September 1, 2011. A claim that arises under a contract executed before September 1, 2011, 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 article is intended to create, rescind, expand, or limit any waiver of sovereign immunity to suit applicable to any contract executed before September 1, 2011.