

By: Workman, et al.

H.B. No. 1041

Substitute the following for H.B. No. 1041:

By: Cook

C.S.H.B. No. 1041

A BILL TO BE ENTITLED

AN ACT

relating to the waiver of sovereign immunity for certain 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 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

1 county, municipality, court of a county or municipality, special
2 purpose district, or other political subdivision of this state.

3 Sec. 114.002. APPLICABILITY. This chapter applies only to
4 a claim for breach of contract in which the matter in controversy
5 exceeds \$250,000, exclusive of interest.

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

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

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

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

23 (3) interest as allowed by law.

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

27 (1) consequential damages, except as allowed under

1 Subsection (a)(1);

2 (2) exemplary damages; or

3 (3) damages for unabsorbed home office overhead.

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

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

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

19 Sec. 114.008. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
20 LIABILITY. This chapter does not waive sovereign immunity to a
21 claim arising from a cause of action for negligence.

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

25 Sec. 114.010. NO RECOVERY OF ATTORNEY'S FEES. Attorney's
26 fees incurred by a state agency or any other party in the
27 adjudication of a claim by or against a state agency shall not be

1 awarded to any party in the adjudication unless the state agency has
2 entered into a written agreement that expressly authorizes the
3 prevailing party in the adjudication to recover its reasonable and
4 necessary attorney's fees.

5 Sec. 114.011. VENUE. A suit under this chapter may be
6 brought in a district court in:

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

9 (2) Travis County.

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

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

14 (1) a claim for personal injury or wrongful death
15 arising from the breach of a contract; ~~or~~

16 (2) a contract executed or awarded on or before August
17 30, 1999; or

18 (3) a claim for breach of contract to which Chapter
19 114, Civil Practice and Remedies Code, applies.

20 SECTION 3. (a) Chapter 114, Civil Practice and Remedies
21 Code, as added by this Act, applies only to a claim arising under a
22 contract executed on or after September 1, 2011. A claim that
23 arises under a contract executed before September 1, 2011, is
24 governed by the law applicable to the claim immediately before the
25 effective date of this Act, and that law is continued in effect for
26 that purpose.

27 (b) Nothing in this Act is intended to create, rescind,

1 expand, or limit any waiver of sovereign immunity to suit
2 applicable to any contract executed before September 1, 2011.

3 SECTION 4. This Act takes effect September 1, 2011.