

BILL ANALYSIS

C.S.H.B. 586
By: Workman
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.H.B. 586 seeks to address the need for such procedures by establishing a waiver of sovereign immunity for certain claims arising under contracts with state agencies.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 586 amends the Civil Practice and Remedies Code to establish a waiver of sovereign immunity to suit for an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and is created by statute or the Texas Constitution, including a university system or a system of higher education, and that is authorized by statute or the constitution to enter into a contract and enters into a written contract for engineering, architectural, or construction services or for materials related to those services. The bill establishes this waiver for the purpose of adjudicating a claim for breach of an express provision of such a contract brought by a party to the contract and subjects the waiver to the terms and conditions of the bill's provisions.

C.S.H.B. 586 limits the total amount of money awarded in an adjudication brought against a state agency for breach of an express provision of such a contract to 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; to the amount owed for written change orders or additional work required to carry out the contract; to 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 to interest at the rate specified by the contract or, if a rate is not specified, the rate for postjudgment interest determined under the Finance Code, but not to exceed 10 percent. The bill prohibits damages awarded in such an adjudication from including consequential damages, exemplary damages, or damages for unabsorbed home office overhead.

C.S.H.B. 586 makes adjudication procedures that are stated in the contract or that are established by the state agency and expressly incorporated into the contract enforceable except to the extent those procedures conflict with the terms set out in the bill. The bill clarifies that its provisions do 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; do not waive sovereign immunity to suit in a federal court; and do 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. The bill exempts an employment contract between a state agency and an employee of that agency from the bill's provisions. The bill authorizes a suit 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 state agency's principal office is located.

C.S.H.B. 586 authorizes satisfaction and payment of a judgment under the bill's provisions to occur only on legislative appropriation of funds in accordance with the Texas Constitution and state statute. The bill exempts property of the state or any agency, department, or office of the state from seizure, attachment, garnishment, or any other creditors' remedy to satisfy a judgment taken under the bill's provisions. The bill prohibits an entity described by the bill's provisions from bringing suit against the state or a unit of state government under Government Code provisions relating to the resolution of contract claims made against the state by an independent contractor who has entered into a contract directly with a unit of state government.

C.S.H.B. 586 amends the Government Code to exempt a claim for breach of a written contract for engineering, architectural, or construction services or for materials related to those services brought by a party to the written contract from the applicability of provisions relating to the resolution of contract claims made against the state by an independent contractor who has entered into a contract directly with a unit of state government.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 586 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

HOUSE COMMITTEE SUBSTITUTE

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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.

(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

(See Sec. 114.010 below.)

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 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. 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) 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

(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.

Sec. 114.006. NO WAIVER OF OTHER DEFENSES.

Sec. 114.007. NO WAIVER OF 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.

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.

(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.

Sec. 114.005. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE.

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Sec. 114.007. NO WAIVER OF 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, fraud, tortious interference with a contract, or any other tort.

Sec. 114.009. EMPLOYMENT CONTRACTS EXEMPT.

(See Sec. 114.004(a)(3) above.)

Sec. 114.010. 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) a county in which the principal office of

the state agency is located.

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.

SECTION 2. Section 2260.002, Government Code, is amended.

SECTION 2. Same as introduced version.

SECTION 3. (a) 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. 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.

SECTION 3. Same as introduced version.

(b) 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. This Act takes effect September 1, 2013.

SECTION 4. Same as introduced version.