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H.B. No. 586

A BILL TO BE ENTITLED

AN ACT

relating to the waiver of sovereign immunity for certain design and construction 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.

(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.

1       Sec. 114.002. APPLICABILITY. This chapter applies only to  
2 a claim for breach of a written contract for engineering,  
3 architectural, or construction services or for materials related to  
4 engineering, architectural, or construction services brought by a  
5 party to the written contract.

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  
11 provision of the contract, subject to the terms and conditions of  
12 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 provision of a contract  
16 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 if the  
21 contract expressly provides for such compensation;

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

24               (3) reasonable and necessary attorney's fees based on  
25 an hourly rate that are equitable and just if the contract expressly  
26 provides for such recovery; and

27               (4) interest at the rate specified by the contract or,

1 if a rate is not specified, the rate for postjudgment interest under  
2 Section 304.003(c), Finance Code, but not to exceed 10 percent.

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

6 (1) consequential damages;

7 (2) exemplary damages; or

8 (3) damages for unabsorbed home office overhead.

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

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

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

24 Sec. 114.008. NO WAIVER OF IMMUNITY TO SUIT FOR TORT  
25 LIABILITY. This chapter does not waive sovereign immunity to a  
26 claim arising from a cause of action for negligence, fraud,  
27 tortious interference with a contract, or any other tort.

1       Sec. 114.009. EMPLOYMENT CONTRACTS EXEMPT. This chapter  
2 does not apply to an employment contract between a state agency and  
3 an employee of that agency.

4       Sec. 114.010. VENUE. A suit under this chapter may be  
5 brought in a district court in:

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

8           (2) a county in which the principal office of the state  
9 agency is located.

10       Sec. 114.011. LIMITATION ON REMEDIES. Satisfaction and  
11 payment of a judgment under this chapter may occur only on  
12 legislative appropriation of funds in accordance with the Texas  
13 Constitution and the statutes of this state. Property of the state  
14 or any agency, department, or office of the state is not subject to  
15 seizure, attachment, garnishment, or any other creditors' remedy to  
16 satisfy a judgment taken under this chapter.

17       Sec. 114.012. EXCLUSIVE REMEDY. An entity described by  
18 this chapter may not bring suit under Chapter 2260, Government  
19 Code, against the state or a unit of state government as defined by  
20 Section 2260.001, Government Code.

21       Sec. 114.013. REPORT. Before January 1 of each  
22 even-numbered year, each state agency shall report to the governor,  
23 the comptroller, and each house of the legislature the cost of  
24 defense to the state agency and the office of the attorney general  
25 in an adjudication brought against the agency under a contract  
26 subject to this chapter. Included in the report shall be the amount  
27 claimed in any adjudication pending on the date of the report.

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

3 Sec. 2260.002. APPLICABILITY. This chapter does not apply  
4 to:

5 (1) a claim for personal injury or wrongful death  
6 arising from the breach of a contract; ~~[or]~~

7 (2) a contract executed or awarded on or before August  
8 30, 1999; or

9 (3) a claim for breach of contract to which Chapter  
10 114, Civil Practice and Remedies Code, applies.

11 SECTION 3. (a) Chapter 114, Civil Practice and Remedies  
12 Code, as added by this Act, applies only to a claim arising under a  
13 contract executed on or after September 1, 2013. A claim that  
14 arises under a contract executed before September 1, 2013, is  
15 governed by the law applicable to the claim immediately before the  
16 effective date of this Act, and that law is continued in effect for  
17 that purpose.

18 (b) Nothing in this Act is intended to create, rescind,  
19 expand, or limit any waiver of sovereign immunity to suit  
20 applicable to any contract executed before September 1, 2013.

21 SECTION 4. This Act takes effect September 1, 2013.