

1-1 By: Workman, et al. (Senate Sponsor - Deuell) H.B. No. 586
 1-2 (In the Senate - Received from the House May 10, 2013;
 1-3 May 10, 2013, read first time and referred to Committee on State
 1-4 Affairs; May 17, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-6 May 17, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 586 By: Deuell

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the waiver of sovereign immunity for certain design and
 1-22 construction claims arising under written contracts with state
 1-23 agencies.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Title 5, Civil Practice and Remedies Code, is
 1-26 amended by adding Chapter 114 to read as follows:

1-27 CHAPTER 114. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN
 1-28 CONTRACTS WITH STATE AGENCIES

1-29 Sec. 114.001. DEFINITIONS. In this chapter:

1-30 (1) "Adjudication" of a claim means the bringing of a
 1-31 civil suit and prosecution to final judgment in county or state
 1-32 court.

1-33 (2) "Contract subject to this chapter" means a written
 1-34 contract stating the essential terms of the agreement for providing
 1-35 goods or services to the state agency that is properly executed on
 1-36 behalf of the state agency. The term does not include a contract
 1-37 that is subject to Section 201.112, Transportation Code.

1-38 (3) "State agency" means an agency, department,
 1-39 commission, bureau, board, office, council, court, or other entity
 1-40 that is in any branch of state government and that is created by the
 1-41 constitution or a statute of this state, including a university
 1-42 system or a system of higher education. The term does not include a
 1-43 county, municipality, court of a county or municipality, special
 1-44 purpose district, or other political subdivision of this state.

1-45 Sec. 114.002. APPLICABILITY. This chapter applies only to
 1-46 a claim for breach of a written contract for engineering,
 1-47 architectural, or construction services or for materials related to
 1-48 engineering, architectural, or construction services brought by a
 1-49 party to the written contract.

1-50 Sec. 114.003. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN
 1-51 CLAIMS. A state agency that is authorized by statute or the
 1-52 constitution to enter into a contract and that enters into a
 1-53 contract subject to this chapter waives sovereign immunity to suit
 1-54 for the purpose of adjudicating a claim for breach of an express
 1-55 provision of the contract, subject to the terms and conditions of
 1-56 this chapter.

1-57 Sec. 114.004. LIMITATIONS ON ADJUDICATION AWARDS. (a) The
 1-58 total amount of money awarded in an adjudication brought against a
 1-59 state agency for breach of an express provision of a contract
 1-60 subject to this chapter is limited to the following:

2-1 (1) the balance due and owed by the state agency under
 2-2 the contract as it may have been amended, including any amount owed
 2-3 as compensation for the increased cost to perform the work as a
 2-4 direct result of owner-caused delays or acceleration if the
 2-5 contract expressly provides for that compensation;

2-6 (2) the amount owed for written change orders or
 2-7 additional work required to carry out the contract;

2-8 (3) reasonable and necessary attorney's fees based on
 2-9 an hourly rate that are equitable and just if the contract
 2-10 expressly provides for that recovery; and

2-11 (4) interest at the rate specified by the contract or,
 2-12 if a rate is not specified, the rate for postjudgment interest under
 2-13 Section 304.003(c), Finance Code, but not to exceed 10 percent.

2-14 (b) Damages awarded in an adjudication brought against a
 2-15 state agency arising under a contract subject to this chapter may
 2-16 not include:

2-17 (1) consequential damages;

2-18 (2) exemplary damages; or

2-19 (3) damages for unabsorbed home office overhead.

2-20 Sec. 114.005. CONTRACTUAL ADJUDICATION PROCEDURES
 2-21 ENFORCEABLE. Adjudication procedures, including requirements for
 2-22 servicing notices or engaging in alternative dispute resolution
 2-23 proceedings before bringing a suit or an arbitration proceeding,
 2-24 that are stated in the contract subject to this chapter or that are
 2-25 established by the state agency and expressly incorporated into the
 2-26 contract are enforceable, except to the extent those procedures
 2-27 conflict with the terms of this chapter.

2-28 Sec. 114.006. NO WAIVER OF OTHER DEFENSES. This chapter
 2-29 does not waive a defense or a limitation on damages available to a
 2-30 party to a contract, other than a bar against suit based on
 2-31 sovereign immunity.

2-32 Sec. 114.007. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL
 2-33 COURT. This chapter does not waive sovereign immunity to suit in
 2-34 federal court.

2-35 Sec. 114.008. NO WAIVER OF IMMUNITY TO SUIT FOR TORT
 2-36 LIABILITY. This chapter does not waive sovereign immunity to a
 2-37 claim arising from a cause of action for negligence, fraud,
 2-38 tortious interference with a contract, or any other tort.

2-39 Sec. 114.009. EMPLOYMENT CONTRACTS EXEMPT. This chapter
 2-40 does not apply to an employment contract between a state agency and
 2-41 an employee of that agency.

2-42 Sec. 114.010. VENUE. A suit under this chapter may be
 2-43 brought in a district court in:

2-44 (1) a county in which the events or omissions giving
 2-45 rise to the claim occurred; or

2-46 (2) a county in which the principal office of the state
 2-47 agency is located.

2-48 Sec. 114.011. LIMITATION ON REMEDIES. Satisfaction and
 2-49 payment of any judgment under this chapter may not be paid from
 2-50 funds appropriated to the state agency from general revenue unless
 2-51 the funds are specifically appropriated for that purpose. Property
 2-52 of the state or any agency, department, or office of the state is
 2-53 not subject to seizure, attachment, garnishment, or any other
 2-54 creditors' remedy to satisfy a judgment taken under this chapter.

2-55 Sec. 114.012. ALTERNATIVE REMEDY. The remedy provided by
 2-56 this chapter is an alternative to the remedy provided by Chapter
 2-57 2260, Government Code. A party claiming breach of an express
 2-58 provision of the contract shall elect to pursue the remedy provided
 2-59 by this chapter or the remedy provided by Chapter 2260, Government
 2-60 Code. The election is binding and may not be revoked.

2-61 Sec. 114.013. REPORT. Before January 1 of each
 2-62 even-numbered year, each state agency shall report to the governor,
 2-63 the comptroller, and each house of the legislature the cost of
 2-64 defense to the state agency and the office of the attorney general
 2-65 in an adjudication brought against the agency under a contract
 2-66 subject to this chapter. Included in the report shall be the amount
 2-67 claimed in any adjudication pending on the date of the report.

2-68 SECTION 2. Section 2260.002, Government Code, is amended to
 2-69 read as follows:

3-1 Sec. 2260.002. APPLICABILITY. This chapter does not apply
3-2 to:

3-3 (1) a claim for personal injury or wrongful death
3-4 arising from the breach of a contract; [~~or~~]

3-5 (2) a contract executed or awarded on or before August
3-6 30, 1999; or

3-7 (3) a claim for breach of contract to which Chapter
3-8 114, Civil Practice and Remedies Code, applies.

3-9 SECTION 3. (a) Chapter 114, Civil Practice and Remedies
3-10 Code, as added by this Act, applies only to a claim arising under a
3-11 contract executed on or after September 1, 2013. A claim that
3-12 arises under a contract executed before September 1, 2013, is
3-13 governed by the law applicable to the claim immediately before the
3-14 effective date of this Act, and that law is continued in effect for
3-15 that purpose.

3-16 (b) Nothing in this Act is intended to create, rescind,
3-17 expand, or limit any waiver of sovereign immunity to suit
3-18 applicable to any contract executed before September 1, 2013.

3-19 SECTION 4. This Act takes effect September 1, 2013.

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