

SENATE AMENDMENTS

2nd Printing

By: Workman, Leach, Callegari, Menendez,
Smithee, et al.

H.B. No. 586

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the waiver of sovereign immunity for certain design and
3 construction claims arising under written contracts with state
4 agencies.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 CHAPTER 114. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN

9 CONTRACTS WITH STATE AGENCIES

10 Sec. 114.001. DEFINITIONS. In this chapter:

11 (1) "Adjudication" of a claim means the bringing of a
12 civil suit and prosecution to final judgment in county or state
13 court.

14 (2) "Contract subject to this chapter" means a written
15 contract stating the essential terms of the agreement for providing
16 goods or services to the state agency that is properly executed on
17 behalf of the state agency.

18 (3) "State agency" means an agency, department,
19 commission, bureau, board, office, council, court, or other entity
20 that is in any branch of state government and that is created by the
21 constitution or a statute of this state, including a university
22 system or a system of higher education. The term does not include a
23 county, municipality, court of a county or municipality, special
24 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.

ADOPTED

MAY 22 2013

Atty. Gen.
Secretary of the Senate

By: Denell

H.B. No. 586

Substitute the following for ____ .B. No. ____ :

By: Denell

C.S. ____ .B. No. ____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the waiver of sovereign immunity for certain design
3 and construction claims arising under written contracts with
4 state agencies.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 CHAPTER 114. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN
9 CONTRACTS WITH STATE AGENCIES

10 Sec. 114.001. DEFINITIONS. In this chapter:

11 (1) "Adjudication" of a claim means the bringing of a
12 civil suit and prosecution to final judgment in county or state
13 court.

14 (2) "Contract subject to this chapter" means a
15 written contract stating the essential terms of the agreement
16 for providing goods or services to the state agency that is
17 properly executed on behalf of the state agency. The term does
18 not include a contract that is subject to Section 201.112,
19 Transportation Code.

20 (3) "State agency" means an agency, department,
21 commission, bureau, board, office, council, court, or other
22 entity that is in any branch of state government and that is
23 created by the constitution or a statute of this state,
24 including a university system or a system of higher education.

1 The term does not include a county, municipality, court of a
2 county or municipality, special purpose district, or other
3 political subdivision of this state.

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

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

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

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

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

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

4 (4) interest at the rate specified by the contract
5 or, if a rate is not specified, the rate for postjudgment
6 interest under Section 304.003(c), Finance Code, but not to
7 exceed 10 percent.

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

11 (1) consequential damages;

12 (2) exemplary damages; or

13 (3) damages for unabsorbed home office overhead.

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

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

27 Sec. 114.007. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL

1 COURT. This chapter does not waive sovereign immunity to suit
2 in federal court.

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

7 Sec. 114.009. EMPLOYMENT CONTRACTS EXEMPT. This chapter
8 does not apply to an employment contract between a state agency
9 and an employee of that agency.

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

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

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

16 Sec. 114.011. LIMITATION ON REMEDIES. Satisfaction and
17 payment of any judgment under this chapter may not be paid from
18 funds appropriated to the state agency from general revenue
19 unless the funds are specifically appropriated for that purpose.
20 Property of the state or any agency, department, or office of
21 the state is not subject to seizure, attachment, garnishment, or
22 any other creditors' remedy to satisfy a judgment taken under
23 this chapter.

24 Sec. 114.012. ALTERNATIVE REMEDY. The remedy provided by
25 this chapter is an alternative to the remedy provided by Chapter
26 2260, Government Code. A party claiming breach of an express
27 provision of the contract shall elect to pursue the remedy

1 provided by this chapter or the remedy provided by Chapter 2260,
2 Government Code. The election is binding and may not be
3 revoked.

4 Sec. 114.013. REPORT. Before January 1 of each even-
5 numbered year, each state agency shall report to the governor,
6 the comptroller, and each house of the legislature the cost of
7 defense to the state agency and the office of the attorney
8 general in an adjudication brought against the agency under a
9 contract subject to this chapter. Included in the report shall
10 be the amount claimed in any adjudication pending on the date of
11 the report.

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

14 Sec. 2260.002. APPLICABILITY. This chapter does not apply
15 to:

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

18 (2) a contract executed or awarded on or before
19 August 30, 1999; or

20 (3) a claim for breach of contract to which Chapter
21 114, Civil Practice and Remedies Code, applies.

22 SECTION 3. (a) Chapter 114, Civil Practice and Remedies
23 Code, as added by this Act, applies only to a claim arising
24 under a contract executed on or after September 1, 2013. A
25 claim that arises under a contract executed before September 1,
26 2013, is governed by the law applicable to the claim immediately
27 before the effective date of this Act, and that law is continued

1 in effect for that purpose.

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

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

ADOPTED

on 3rd
MAY 22 2013

FLOOR AMENDMENT NO. 1

Arlene Spaw
Secretary of the Senate

BY:

Craig Estes

(on third reading)

1 Amend C.S.H. B. No. 586 by adding the following appropriately
2 numbered SECTIONS to the bill and renumbering subsequent
3 SECTIONS of the bill accordingly:

4 SECTION __. Section 2001.052, Government Code, is amended
5 to read as follows:

6 Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a
7 hearing in a contested case must include:

8 (1) a statement of the time, place, and nature of the
9 hearing;

10 (2) a statement of the legal authority and
11 jurisdiction under which the hearing is to be held;

12 (3) a reference to the particular sections of the
13 statutes and rules involved; and

14 (4) a short, plain statement of the factual matters
15 asserted.

16 (b) If a state agency or other party is unable to state
17 factual matters in detail at the time notice under this section
18 is served, an initial notice may be limited to a statement of
19 the issues involved. On timely written application, a more
20 definite and detailed statement of the facts shall be furnished
21 not less than seven [~~three~~] days before the date set for the
22 hearing. In a proceeding in which the state agency has the
23 burden of proof, a state agency that intends to rely on a
24 section of a statute or rule not previously referenced in the
25 notice of hearing must amend the notice to refer to the section
26 of the statute or rule not later than the seventh day before the
27 date set for the hearing. This subsection does not prohibit the
28 state agency from filing an amendment during the hearing of a
29 contested case provided the opposing party is granted a

1 continuance of at least seven days to prepare its case on
2 request of the opposing party.

3 (c) In a suit for judicial review of a final decision or
4 order of a state agency in a contested case, the state agency's
5 failure to comply with Subsection (a)(3) or (b) shall constitute
6 prejudice to the substantial rights of the appellant under
7 Section 2001.174(2) unless the court finds that the failure did
8 not unfairly surprise and prejudice the appellant.

9 SECTION __. Section 2001.054, Government Code, is amended
10 by adding Subsections (c-1) and (e) to read as follows:

11 (c-1) If a state agency that has been granted the power to
12 summarily suspend a license under another statute determines
13 that an imminent peril to the public health, safety, or welfare
14 requires emergency action and incorporates a factual and legal
15 basis establishing that imminent peril in an order, the agency
16 may issue an order to summarily suspend the license holder's
17 license pending proceedings for revocation or other action.
18 Unless expressly provided otherwise by another statute, the
19 agency shall initiate the proceedings for revocation or other
20 action not later than the 30th day after the date the summary
21 suspension order is signed. The proceedings must be promptly
22 determined, and if the proceedings are not initiated before the
23 30th day after the date the order is signed, the license holder
24 may appeal the summary suspension order to a Travis County
25 district court. This subsection does not grant any state agency
26 the power to suspend a license without notice or a hearing.

27 (e) In a suit for judicial review of a final decision or
28 order of a state agency brought by a license holder, the
29 agency's failure to comply with Subsection (c) shall constitute
30 prejudice to the substantial rights of the license holder under
31 Section 2001.174(2) unless the court determines that the failure

1 did not unfairly surprise and prejudice the license holder.

2 SECTION __. Subsections (a) and (e), Section 2001.141,
3 Government Code, are amended to read as follows:

4 (a) A decision or order of a state agency that may become
5 final under Section 2001.144 that is adverse to any [~~a~~] party in
6 a contested case must be in writing and signed by a person
7 authorized by the agency to sign the agency decision or order
8 ~~[stated in the record]~~.

9 (e) If a party submits under a state agency rule proposed
10 findings of fact or conclusions of law, the decision shall
11 include a ruling on each proposed finding or conclusion.

12 SECTION __. Section 2001.142, Government Code, is amended
13 to read as follows:

14 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

15 (a) A state agency shall notify each party to [~~it~~] a contested
16 case ~~[shall be notified either personally or by first class~~
17 ~~mail]~~ of any decision or order of the agency in the following
18 manner:

19 (1) personally;

20 (2) if requested or agreed to by the party to be
21 notified, by electronic means sent on the same day the decision
22 or order is signed to the current e-mail address or telecopier
23 number of the party's attorney of record or of the party if the
24 party is not represented by counsel; or

25 (3) by first class, certified, or registered mail sent to
26 the last known address of the party's attorney of record or of
27 the party if the party is not represented by counsel.

28 (b) When a decision or order [~~on issuance~~] in a contested
29 case [~~of a decision~~] that may become final under Section
30 2001.144 is signed or when an order ruling on a motion for
31 rehearing is signed, a state agency shall deliver or send a copy

1 of the decision or order to each party in accordance with
2 Subsection (a). The state agency shall keep a record
3 documenting the provision of the notice provided to each party
4 in accordance with Subsection (a) [~~by first class mail to the~~
5 attorneys of record and shall keep an appropriate record of the
6 mailing. If a party is not represented by an attorney of
7 record, the state agency shall send a copy of the decision or
8 order by first class mail to the party and shall keep an
9 appropriate record of the mailing].

10 (c) If an adversely affected party or the party's attorney
11 of record does not receive the notice required by Subsections
12 (a) and (b) or acquire actual knowledge of a signed decision or
13 order before the 20th day after the date the decision or order
14 is signed, a period specified by or agreed to under Section
15 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a
16 decision or order or motion for rehearing begins, with respect
17 to that party, on the date the party receives the notice or
18 acquires actual knowledge of the signed decision or order,
19 whichever occurs first. The period may not begin earlier than
20 the 20th day or later than the 90th day after the date the
21 decision or order was signed [~~A party or attorney of record~~
22 notified by mail under Subsection (b) is presumed to have been
23 notified on the third day after the date on which the notice is
24 mailed].

25 (d) To establish a revised period under Subsection (c),
26 the adversely affected party must prove, on sworn motion and
27 notice, that the date the party received notice from the state
28 agency or acquired actual knowledge of the signing of the
29 decision or order was after the 19th day but not later than the
30 90th day after the date the decision or order was signed.

31 (e) The state agency must grant or deny the sworn motion

1 not later than the agency's governing board's next meeting or,
2 for a state agency without a governing board with decision-
3 making authority in contested cases, not later than the 10th day
4 after the date the agency receives the sworn motion.

5 (f) If the state agency fails to grant or deny the motion
6 at the next meeting or before the 10th day after the date the
7 agency receives the motion, as appropriate, the motion is
8 considered granted.

9 (g) If the sworn motion filed under Subsection (d) is
10 granted with respect to the party filing that motion, all the
11 periods specified by or agreed to under Section 2001.144(a),
12 2001.146, 2001.147, or 2001.176(a) relating to a decision or
13 order, or motion for rehearing, shall begin on the date
14 specified in the sworn motion that the party first received the
15 notice required by Subsections (a) and (b) or acquired actual
16 knowledge of the signed decision or order. The date specified in
17 the sworn motion shall be considered the date the decision or
18 order was signed.

19 SECTION __. The heading to Section 2001.143, Government
20 Code, is amended to read as follows:

21 Sec. 2001.143. TIME OF [RENDERING] DECISION.

22 SECTION __. Subsections (a) and (b), Section 2001.143,
23 Government Code, are amended to read as follows:

24 (a) A decision or order that may become final under
25 Section 2001.144 in a contested case must be signed [~~rendered~~]
26 not later than the 60th day after the date on which the hearing
27 is finally closed.

28 (b) In a contested case heard by other than a majority of
29 the officials of a state agency, the agency or the person who
30 conducts the contested case hearing may extend the period in
31 which the decision or order may be signed [~~issued~~].

1 SECTION __. Section 2001.144, Government Code, is amended
2 to read as follows:

3 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A
4 decision or order in a contested case is final:

5 (1) if a motion for rehearing is not filed on time,
6 on the expiration of the period for filing a motion for
7 rehearing;

8 (2) if a motion for rehearing is filed on time, on
9 the date:

10 (A) the order overruling the motion for
11 rehearing is signed [~~rendered~~]; or

12 (B) the motion is overruled by operation of law;

13 (3) if a state agency finds that an imminent peril to
14 the public health, safety, or welfare requires immediate effect
15 of a decision or order, on the date the decision or order is
16 signed and incorporates in the decision or order a factual and
17 legal basis establishing an imminent peril to the public health,
18 safety, or welfare [~~rendered~~]; or

19 (4) on the date specified in the decision or order
20 for a case in which all parties agree to the specified date in
21 writing or on the record, provided that if the agreed specified
22 date is [~~not~~] before the date the decision or order is signed,
23 the date the decision or order is signed is the date the
24 decision or order is final for purposes of this section [~~or~~
25 ~~later than the 20th day after the date the order was rendered~~].

26 (b) If a decision or order is final under Subsection
27 (a)(3), a state agency must recite in the decision or order the
28 finding made under Subsection (a)(3) and the fact that the
29 decision or order is final and effective on the date signed
30 [~~rendered~~].

31 SECTION __. Subsection (b), Section 2001.145, Government

1 Code, is amended to read as follows:

2 (b) A decision or order that is final under Section
3 2001.144(a)(2), (3), or (4) is appealable.

4 SECTION __. Section 2001.146, Government Code, is amended
5 by amending Subsections (a), (b), (c), (e), and (f) and adding
6 Subsections (g), (h), and (i) to read as follows:

7 (a) A motion for rehearing in a contested case must be
8 filed by a party not later than the 25th [20th] day after the
9 date ~~[on which]~~ the decision or order that is the subject of the
10 motion is signed, unless the time for filing the motion for
11 rehearing has been extended by an agreement under Section
12 2001.147 or by a written state agency order issued under
13 Subsection (e). On filing of the motion for rehearing, copies
14 of the motion shall be sent to all other parties using the
15 notification procedures specified by Section 2001.142(a) [party
16 ~~or the party's attorney of record is notified as required by~~
17 ~~Section 2001.142 of a decision or order that may become final~~
18 ~~under Section 2001.144].~~

19 (b) A party must file with the state agency a reply, if
20 any, to a motion for rehearing [must be filed with the state
21 ~~agency]~~ not later than the 40th [30th] day after the date ~~[on~~
22 ~~which the party or the party's attorney of record is notified as~~
23 ~~required by Section 2001.142 of]~~ the decision or order that is
24 the subject of the motion is signed, or not later than the 15th
25 day after the date a motion for rehearing is filed if the time
26 for filing the motion for rehearing has been extended by an
27 agreement under Section 2001.147 or by a written state agency
28 order under Subsection (e). On filing of the reply, copies of
29 the reply shall be sent to all other parties using the
30 notification procedures specified by Section 2001.142(a) [or
31 ~~order that may become final under Section 2001.144].~~

1 (c) A state agency shall act on a motion for rehearing not
2 later than the 55th [~~45th~~] day after the date [~~on which the~~
3 ~~party or the party's attorney of record is notified as required~~
4 ~~by Section 2001.142 of]~~ the decision or order that is the
5 subject of the motion is signed [~~that may become final under~~
6 ~~Section 2001.144]~~ or the motion for rehearing is overruled by
7 operation of law.

8 (e) A state agency may, on its own initiative or on the
9 motion of any party for cause shown, by written order extend the
10 time for filing a motion or reply or taking agency action under
11 this section if the agency extends the time or takes the action
12 not later than the 10th day after the date the period for filing
13 a motion or reply or taking agency action expires. An[~~, except~~
14 ~~that an~~] extension may not extend the period for agency action
15 beyond the 100th [~~90th~~] day after the date [~~on which the party~~
16 ~~or the party's attorney of record is notified as required by~~
17 ~~Section 2001.142 of]~~ the decision or order that is the subject
18 of the motion is signed [~~that may become final under Section~~
19 ~~2001.144)].~~

20 (f) In the event of an extension, a motion for rehearing
21 is overruled by operation of law on the date fixed by the order
22 or, in the absence of a fixed date, the 100th day [~~90 days]~~
23 after the date [~~on which the party or the party's attorney of~~
24 ~~record is notified as required by Section 2001.142 of]~~ the
25 decision or order that is the subject of the motion is signed
26 [~~that may become final under Section 2001.144)].~~

27 (g) A motion for rehearing must identify with
28 particularity findings of fact or conclusions of law that are
29 the subject of the complaint and any evidentiary or legal ruling
30 claimed to be erroneous. The motion must also state the legal
31 and factual basis for the claimed error.

1 (h) A subsequent motion for rehearing is not required
2 after a state agency rules on a motion for rehearing unless the
3 order disposing of the original motion for rehearing:

4 (1) modifies, corrects, or reforms in any respect the
5 decision or order that is the subject of the complaint, other
6 than a typographical, grammatical, or other clerical change
7 identified as such by the agency in the order, including any
8 modification, correction, or reformation that does not change
9 the outcome of the contested case; or

10 (2) vacates the decision or order that is the subject
11 of the motion and provides for a new decision or order.

12 (i) The time limits and other requirements for filing a
13 subsequent motion for a rehearing, for a reply to the motion,
14 and for ruling on the motion are governed by this section and
15 Sections 2001.142, 2001.144, 2001.145, and 2001.147.

16 SECTION __. Subsection (a), Section 2001.176, Government
17 Code, is amended to read as follows:

18 (a) A person initiates judicial review in a contested case
19 by filing a petition not later than the 30th day after the date
20 [~~on which~~] the decision or order that is the subject of
21 complaint is final and appealable. In a contested case in which
22 a motion for rehearing is a prerequisite for seeking judicial
23 review, a prematurely filed petition is effective to initiate
24 judicial review and is considered to be filed:

25 (1) on the date the last timely motion for rehearing
26 is overruled; and

27 (2) after the motion is overruled.


28 SECTION __. The changes in law made by this Act to Chapter
29 2001, Government Code, apply only to an administrative hearing
30 that is set by the State Office of Administrative Hearings, or
31 another state agency conducting an administrative hearing, on or


1 after the effective date of this Act. A hearing set before the
2 effective date of this Act, or any decision issued or appeal
3 from the hearing, is governed by the law in effect when the
4 hearing was set, and the former law is continued in effect for
5 that purpose.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 22 2013

BY: 


Secretary of the Senate

1 Amend C.S.H.B. No. 586 (Senate committee printing) as
2 follows:

3 (1) In SECTION 1 of the bill, in added Section 114.002,
4 Civil Practice and Remedies Code (page 1, line 49), between
5 "contract" and the period, insert ", in which the amount in
6 controversy is not less than \$250,000, excluding penalties,
7 costs, expenses, pre-judgment interest, and attorney fees".

8 (2) In SECTION 1 of the bill (page 2, lines 55-60), strike
9 added Section 114.012, Civil Practice and Remedies Code, and
10 substitute the following:

11 Sec. 114.012. EXCLUSIVE REMEDY. A claim to which this
12 chapter applies may not be brought under Chapter 2260,
13 Government Code, against the state or a unit of state government
14 as defined by Section 2260.001, Government Code.

ADOPTED

MAY 22 2013

Actay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. _____

2

BY: _____

[Signature]

1 Amend C.S.H.B. No. 586 (senate committee printing) in SECTION
2 1 of the bill, in added Section 114.004(a)(2), Civil Practice and
3 Remedies Code (page 2, lines 6-7), by striking "or additional work
4 required to carry out the contract".

ADOPTED

MAY 22 2013

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 3

BY: *Da*

1 Amend C.S.H.B. No. 586 (senate committee printing) in SECTION
2 1 of the bill, in added Section 114.004(a)(3), Civil Practice and
3 Remedies Code (page 2, line 10), by striking "for that recovery" and
4 substituting "that recovery of attorney's fees is available to all
5 parties to the contract".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 23, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB586 by Workman (Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to waive sovereign immunity for the state related to a breach of contract for engineering, architectural, or construction services or for materials related to those professional services.

The Office of the Attorney General indicates that additional lawsuits could arise against the state upon enactment of the bill.

The OAG estimates that an additional 5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload. However, it is anticipated that any costs associated with the bill could be absorbed within existing resources.

The Office of Court Administration indicates that any costs associated with the bill to the court system could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 212 Office of Court Administration,
Texas Judicial Council

LBB Staff: UP, AG, JM, CL, EP, JP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 17, 2013

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB586 by Workman (Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Civil Practice and Remedies Code to waive sovereign immunity for the state related to a breach of contract for engineering, architectural, or construction services or for materials related to those professional services.

The Office of the Attorney General indicates that additional lawsuits could arise against the state upon enactment of the bill.

The OAG estimates that an additional 5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload. However, it is anticipated that any costs associated with the bill could be absorbed within existing resources.

The Office of Court Administration indicates that any costs associated with the bill to the court system could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, AG, JM, CL, EP, JP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 15, 2013

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB586** by Workman (Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to waive sovereign immunity for the state related to a breach of contract for engineering, architectural, or construction services or for materials related to those professional services.

The Office of the Attorney General indicates that additional lawsuits could arise against the state upon enactment of the bill.

The OAG estimates that an additional 5.5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload. However, it is anticipated that any costs associated with the bill could be absorbed within existing resources.

The Office of Court Administration indicates that any costs associated with the bill to the court system could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 212 Office of Court Administration,
Texas Judicial Council

LBB Staff: UP, AG, JM, CL, EP, JP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 1, 2013

TO: Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB586 by Workman (Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to waive sovereign immunity for the state related to a breach of contract for engineering, architectural, or construction services or for materials related to those professional services.

The Office of the Attorney General indicates that additional lawsuits could arise against the state upon enactment of the bill.

The OAG estimates that an additional 5.5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload. However, it is anticipated that any costs associated with the bill could be absorbed within existing resources.

The Office of Court Administration indicates that any costs associated with the bill to the court system could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General

LBB Staff: UP, CL, EP, JM, JP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 7, 2013

TO: Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB586 by Workman (Relating to the waiver of sovereign immunity for certain claims arising under written contracts with state agencies.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to waive sovereign immunity for the state related to a breach of contract suit in which the contract is in excess of \$250,000. The Office of the Attorney General indicates that additional lawsuits could arise against the state upon enactment of the bill. The OAG estimates that an additional 5.5 Assistant Attorney General and Legal Assistant positions would be required to address the increased workload. However, it is anticipated that any costs associated with the bill could be absorbed within existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General

LBB Staff: UP, CL, EP, JM