

House Bill 586
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

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(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. The term does not include a contract that is subject to Section 201.112, Transportation Code.

(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, in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, pre-judgment interest, and attorney fees.
[FA1(1)]

Sec. 114.003. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. A state agency that is authorized by

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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

(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. Adjudication procedures,

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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 that compensation;

(2) the amount owed for written change orders; [FA2]

(3) reasonable and necessary attorney's fees based on an hourly rate that are equitable and just if the contract expressly provides that recovery of attorney's fees is available to all parties to the contract; and [FA3]

(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;

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Sec. 114.005. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE. Adjudication procedures,

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including requirements for serving notices or engaging in alternative dispute resolution proceedings before bringing a suit or an arbitration proceeding, that are stated in the contract subject to this chapter or that are established by the state agency and expressly incorporated into the contract are enforceable except to the extent those procedures conflict with the terms of this chapter.

Sec. 114.006. NO WAIVER OF OTHER DEFENSES. This chapter does 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.

Sec. 114.007. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. This chapter does not waive sovereign 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. This chapter does not apply to an employment contract between a state agency and an employee of that agency.

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

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including requirements for serving notices or engaging in alternative dispute resolution proceedings before bringing a suit or an arbitration proceeding, that are stated in the contract subject to this chapter or that are established by the state agency and expressly incorporated into the contract are enforceable, except to the extent those procedures conflict with the terms of this chapter.

Sec. 114.006. NO WAIVER OF OTHER DEFENSES. This chapter does 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.

Sec. 114.007. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. This chapter does not waive sovereign 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. This chapter does not apply to an employment contract between a state agency and an employee of that agency.

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 any judgment under this chapter may not be paid from funds appropriated to the state agency from general revenue unless the funds are specifically appropriated for that

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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.

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

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

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

- (1) a claim for personal injury or wrongful death arising from the breach of a contract; [ø]
- (2) a contract executed or awarded on or before August 30, 1999; or
- (3) a claim for breach of contract to which Chapter 114, Civil Practice and Remedies Code, applies.

SECTION 3. (a) Chapter 114, Civil Practice and Remedies

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purpose. 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. A claim to which this chapter applies may not be brought under Chapter 2260, Government Code, against the state or a unit of state government as defined by Section 2260.001, Government Code. [FA1(2)]

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

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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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.

(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.

No equivalent provision.

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SECTION 4. Same as House version.

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

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

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short, plain statement of the factual matters asserted.

(b) If a state agency or other party is unable to state factual matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be furnished not less than seven [~~three~~] days before the date set for the hearing. In a proceeding in which the state agency has the burden of proof,

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a state agency that intends to rely on a section of a statute or rule not previously referenced in the notice of hearing must amend the notice to refer to the section of the statute or rule not later than the seventh day before the date set for the hearing. This subsection does not prohibit the state agency from filing an amendment during the hearing of a contested case provided the opposing party is granted a continuance of at least seven days to prepare its case on request of the opposing party.

(c) In a suit for judicial review of a final decision or order of a state agency in a contested case, the state agency's failure to comply with Subsection (a)(3) or (b) shall constitute prejudice to the substantial rights of the appellant under Section 2001.174(2) unless the court finds that the failure did not unfairly surprise and prejudice the appellant. [FA1,3rd]

No equivalent provision.

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

(c-1) If a state agency that has been granted the power to summarily suspend a license under another statute determines that an imminent peril to the public health, safety, or welfare requires emergency action and incorporates a factual and legal basis establishing that imminent peril in an order, the agency may issue an order to summarily suspend the license holder's license pending proceedings for revocation or other action. Unless expressly provided otherwise by another statute, the agency shall initiate the proceedings for revocation or other action not later than the 30th day after the date the summary suspension order is signed. The proceedings must be promptly determined, and if the proceedings are not initiated

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before the 30th day after the date the order is signed, the license holder may appeal the summary suspension order to a Travis County district court. This subsection does not grant any state agency the power to suspend a license without notice or a hearing.

(e) In a suit for judicial review of a final decision or order of a state agency brought by a license holder, the agency's failure to comply with Subsection (c) shall constitute prejudice to the substantial rights of the license holder under Section 2001.174(2) unless the court determines that the failure did not unfairly surprise and prejudice the license holder.
[FA1,3rd]

No equivalent provision.

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

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

(e) If a party submits under a state agency rule proposed findings of fact or conclusions of law, the decision shall include a ruling on each proposed finding or conclusion.
[FA1,3rd]

No equivalent provision.

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

Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS. (a) A state agency shall notify each party to [it] a contested case ~~[shall be notified either personally or by first~~

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~~class mail]~~ of any decision or order of the agency in the following manner:

(1) personally;

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

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

(b) When a decision or order [On issuance] in a contested case [of a decision] that may become final under Section 2001.144 is signed or when an order ruling on a motion for rehearing is signed, a state agency shall deliver or send a copy of the decision or order to each party in accordance with Subsection (a). The state agency shall keep a record documenting the provision of the notice provided to each party in accordance with Subsection (a) [by first class mail to the attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney of record, the state agency shall send a copy of the decision or order by first class mail to the party and shall keep an appropriate record of the mailing].

(c) If an adversely affected party or the party's attorney of record does not receive the notice required by Subsections (a) and (b) or acquire actual knowledge of a signed decision or order before the 20th day after the date the decision or order is signed, a period specified by or agreed to under Section 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a decision or order or motion for rehearing begins, with respect to that party, on the date the party receives the notice or

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acquires actual knowledge of the signed decision or order, whichever occurs first. The period may not begin earlier than the 20th day or later than the 90th day after the date the decision or order was signed [A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed].

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

(e) The state agency must grant or deny the sworn motion not later than the agency's governing board's next meeting or, for a state agency without a governing board with decision-making authority in contested cases, not later than the 10th day after the date the agency receives the sworn motion.

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

(g) If the sworn motion filed under Subsection (d) is granted with respect to the party filing that motion, all the periods specified by or agreed to under Section 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a decision or order, or motion for rehearing, shall begin on the date specified in the sworn motion that the party first received the notice required by Subsections (a) and (b) or acquired actual knowledge of the signed decision or order. The date specified in the sworn motion shall be considered the date the decision or order was signed. [FA1,3rd]

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No equivalent provision.

SECTION __. The heading to Section 2001.143, Government Code, is amended to read as follows:
Sec. 2001.143. TIME OF ~~RENDERING~~ DECISION.
[FA1,3rd]

No equivalent provision.

SECTION __. Subsections (a) and (b), Section 2001.143, Government Code, are amended to read as follows:
(a) A decision or order that may become final under Section 2001.144 in a contested case must be signed ~~rendered~~ not later than the 60th day after the date on which the hearing is finally closed.
(b) In a contested case heard by other than a majority of the officials of a state agency, the agency or the person who conducts the contested case hearing may extend the period in which the decision or order may be signed ~~issued~~.
[FA1,3rd]

No equivalent provision.

SECTION __. Section 2001.144, Government Code, is amended to read as follows:
Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL.
(a) A decision or order in a contested case is final:
(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;
(2) if a motion for rehearing is filed on time, on the date:
(A) the order overruling the motion for rehearing is signed ~~rendered~~; or
(B) the motion is overruled by operation of law;
(3) if a state agency finds that an imminent peril to the public

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health, safety, or welfare requires immediate effect of a decision or order, on the date the decision or order is signed and incorporates in the decision or order a factual and legal basis establishing an imminent peril to the public health, safety, or welfare ~~rendered~~; or

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

(b) If a decision or order is final under Subsection (a)(3), a state agency must recite in the decision or order the finding made under Subsection (a)(3) and the fact that the decision or order is final and effective on the date signed ~~rendered~~.
[FA1,3rd]

No equivalent provision.

SECTION __. Subsection (b), Section 2001.145, Government Code, is amended to read as follows:

(b) A decision or order that is final under Section 2001.144(a)(2), (3), or (4) is appealable. [FA1,3rd]

No equivalent provision.

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

(a) A motion for rehearing in a contested case must be filed by a party not later than the 25th ~~20th~~ day after the date ~~on which~~ the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has

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been extended by an agreement under Section 2001.147 or by a written state agency order issued under Subsection (e). On filing of the motion for rehearing, copies of the motion shall be sent to all other parties using the notification procedures specified by Section 2001.142(a) [party or the party's attorney of record is notified as required by Section 2001.142 of a decision or order that may become final under Section 2001.144].

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

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

(e) A state agency may, on its own initiative or on the motion of any party for cause shown, by written order extend the time for filing a motion or reply or taking agency action under this section if the agency extends the time or takes the action not

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later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. An~~[-except that an]~~ extension may not extend the period for agency action beyond the ~~100th~~ 90th day after the date ~~[on which the party or the party's attorney of record is notified as required by Section 2001.142 of]~~ the decision or order that is the subject of the motion is signed ~~[that may become final under Section 2001.144].~~

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

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

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

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

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

(i) The time limits and other requirements for filing a

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subsequent motion for a rehearing, for a reply to the motion, and for ruling on the motion are governed by this section and Sections 2001.142, 2001.144, 2001.145, and 2001.147.
[FA1,3rd]

No equivalent provision.

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

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

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

(2) after the motion is overruled. [FA1,3rd]

No equivalent provision.

SECTION __. The changes in law made by this Act to Chapter 2001, Government Code, apply only to an administrative hearing that is set by the State Office of Administrative Hearings, or another state agency conducting an administrative hearing, on or after the effective date of this Act. A hearing set before the effective date of this Act, or any decision issued or appeal from the hearing, is governed by the law in effect when the hearing was set, and the former law is continued in effect for that purpose. [FA1,3rd]