

By: Cyrier, Anderson of McLennan

H.B. No. 2128

A BILL TO BE ENTITLED

1 AN ACT

2 relating to adjudication of claims arising from certain written
3 contracts with state agencies.

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

5 SECTION 1. Section 114.003, Civil Practice and Remedies
6 Code, is amended to read as follows:

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

14 SECTION 2. Section 114.004, Civil Practice and Remedies
15 Code, is amended to read as follows:

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

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

1 (2) the amount owed for [~~written~~] change orders or
2 additional work the contractor is directed to perform by a state
3 agency in connection with the contract;

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

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

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

14 (1) consequential damages, except as expressly
15 allowed under Subsection (a)(1);

16 (2) exemplary damages; or

17 (3) damages for unabsorbed home office overhead.

18 SECTION 3. Chapter 114, Civil Practice and Remedies Code,
19 as amended by this Act, applies only to a claim arising under a
20 contract executed on or after the effective date of this Act. A
21 claim that arises under a contract executed before the effective
22 date of this Act is governed by the law applicable to the claim
23 immediately before the effective date of this Act, and that law is
24 continued in effect for that purpose.

25 SECTION 4. This Act takes effect September 1, 2017.