

By: Raymond

H.B. No. 3492

A BILL TO BE ENTITLED

AN ACT

relating to resolution of disputes arising under construction contracts.

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

SECTION 1. Title 7, Civil Practice and Remedies Code, is amended by adding Chapter 161 to read as follows:

CHAPTER 161. TEXAS CONSTRUCTION DISPUTE ADJUDICATION ACT

SUBCHAPTER A. DISPUTE ADJUDICATION

161.001. Definitions. In this chapter, "Adjudication" is a non-binding but temporarily dispositive contract mechanism for preventing and resolving disputes between the owners and prime contractors of public and private works.

161.002. RESPONSIBILITY FOR CONSIDERATION. It shall be the responsibility of the owners and prime contractors to recognize the probability of disputes arising during the construction process and to consider providing a mechanism for preventing disputes or for the early resolution of those disputes which do occur. The State and all subdivisions should consider the use of dispute adjudication on all projects. Every contract for the construction of public works should contain a provision that the use of adjudication was considered.

161.003. METHODS OF ADOPTING. Adjudication may be included in a contract by stating the intention of the parties to use this Act, or by any other language and terms they may jointly agree.

SUBCHAPTER C. ADJUDICATION

161.004. PROVISIONS REQUIRED. A party to a construction contract may provide in the contract for the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section. Such provisions of a contract shall:

(a) enable a party to give notice at any time of his intention to refer a dispute to adjudication;

(b) provide a timetable with the object of securing the appointment of a qualified adjudicator from a neutral appointing authority or district court and referral of the dispute to him within 7 days of such notice;

(c) require the adjudicator to reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred;

(d) allow the adjudicator to extend the period of 28 days by up to 14 days, with the consent of the party by whom the dispute was referred;

(e) impose a duty on the adjudicator to act impartially; and

(f) enable the adjudicator to take the initiative in ascertaining the facts and the law.

161.005. QUALIFICATIONS OF ADJUDICATOR. A person shall be qualified to serve as an adjudicator in a particular matter if they are neutral, possess the technical or professional knowledge or experience to understand the issues and make a written reasoned determination of the dispute and have a minimum of fifteen classroom hours of instruction in the adjudication process in a

1 course conducted by an alternative dispute resolution organization  
2 approved by the parties or any court making the appointment.

3 161.006. DECISION TO BE IN WRITING. The contract shall  
4 provide that the decision of the adjudicator shall be in writing,  
5 shall explain the basis for the decision, shall be summarily  
6 enforceable and temporarily binding until the dispute is finally  
7 determined by legal proceedings, by arbitration when the parties  
8 have agreed to arbitration or by agreement.

9 161.007. FINAL DETERMINATION. The parties may agree to  
10 accept the decision of the adjudicator as finally determining the  
11 dispute.

12 161.008. IMMUNITY. The adjudicator is not liable for  
13 anything done or omitted in the discharge or purported discharge of  
14 his functions as adjudicator unless the act or omission is in bad  
15 faith, and any employee or agent of the adjudicator is similarly  
16 protected from liability.

17 SECTION 2. This Act takes effect September 1, 2003.