

By: Wentworth

S.B. No. 986

A BILL TO BE ENTITLED

AN ACT

relating to alternative dispute resolution of certain contract claims against the state.

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

SECTION 1. Sections 2260.003(a) and (c), Government Code, are amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price;

~~and~~

(2) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

(3) any delay or labor-related expense incurred by the contractor as a result of an action of or a failure to act by the unit of state government or a party acting under the supervision or control of the unit of state government.

(c) Any award of damages under this chapter may not include:

(1) ~~consequential or similar damages;~~

~~(2)~~ exemplary damages;

(2) ~~(3)~~ any damages based on an unjust enrichment

1 theory;

2 [~~(4) attorney's fees,~~] or

3 (3) [~~(5)~~] home office overhead.

4 SECTION 2. Section 2260.005, Government Code, is amended to  
5 read as follows:

6 Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section  
7 2260.007, the procedures contained in this chapter are exclusive  
8 and required prerequisites to suit in accordance with Chapter 107,  
9 Civil Practice and Remedies Code. This chapter does not prevent a  
10 contractor sued by a unit of state government from asserting a  
11 counterclaim or right of offset against the unit of state  
12 government in the court in which the unit of state government files  
13 the suit.

14 SECTION 3. Section 2260.051(d), Government Code, is amended  
15 to read as follows:

16 (d) A unit of state government must assert, in a writing  
17 delivered to the contractor, any counterclaim not later than the  
18 30th [~~90th~~] day after the date of notice under Subsection (b). A  
19 unit of state government that does not comply with this subsection  
20 waives the right to assert the counterclaim.

21 SECTION 4. Section 2260.052(a), Government Code, is amended  
22 to read as follows:

23 (a) The chief administrative officer or, if designated in  
24 the contract, another officer of the unit of state government shall  
25 examine the claim and any counterclaim and negotiate with the  
26 contractor in an effort to resolve them. The [~~Except as provided by~~  
27 ~~Subsection (b), the~~] negotiation must begin not later than the 60th

1 day after the earliest [~~later~~] of:

- 2 (1) the date of termination of the contract;
- 3 (2) the completion date in the original contract; or
- 4 (3) the date the claim is received.

5 SECTION 5. Section 2260.056(a), Government Code, is amended  
6 to read as follows:

7 (a) Before the 90th [~~270th~~] day after the date the claim is  
8 filed with the unit of state government and before the expiration of  
9 any extension of time under Section 2260.055, the parties may agree  
10 to mediate a claim made under this chapter.

11 SECTION 6. Section 2260.104(e), Government Code, is amended  
12 to read as follows:

13 (e) In a contested case hearing under this subchapter:

- 14 (1) the decision may not be appealed except for abuse  
15 of discretion; and
- 16 (2) the state agency may not change the finding of fact  
17 or conclusion of law, nor vacate or modify an order as provided in  
18 Section 2001.058(e).

19 SECTION 7. Section 2260.105(a), Government Code, is amended  
20 to read as follows:

21 (a) The unit of state government shall pay the amount of the  
22 claim or part of the claim, including the reasonable cost of  
23 attorney's fees incurred in bringing the claim, if [+]

24 [~~1~~] the administrative law judge finds, by a  
25 preponderance of the evidence, that under the laws of this state the  
26 claim or part of the claim is valid[, and

27 [~~2~~] ~~the total amount of damages, after taking into~~

1 ~~account any counterclaim, is less than \$250,000].~~

2 SECTION 8. Section 2260.1055(a), Government Code, is  
3 amended to read as follows:

4 (a) If, after a hearing, the administrative law judge  
5 determines that a claim involves damages and attorney's fees  
6 totaling [of \$250,000 or] more than the unit of state government has  
7 available from money appropriated to it for the payment of contract  
8 claims and for payment of the contract that is the subject of the  
9 claim, the administrative law judge shall issue a written report  
10 containing the administrative law judge's findings and  
11 recommendations to the legislature.

12 SECTION 9. Sections 2260.052(b) and 2260.104(f),  
13 Government Code, are repealed.

14 SECTION 10. The changes in law made by this Act apply only  
15 to claims involving a breach of a contract entered into by a unit of  
16 state government on or after the effective date of this Act. A  
17 claim involving a breach of a contract entered into by a unit of  
18 state government before the effective date of this Act is governed  
19 by the law in effect immediately before that date, and that law is  
20 continued in effect for that purpose.

21 SECTION 11. This Act takes effect September 1, 2003.