

By: Lucio

S.B. No. 1847

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the authorization and regulation of casino gambling and
3 to the creation, powers, and duties of the Texas Gaming Commission;
4 authorizing taxes, establishing scholarships for Texas Students in
5 public colleges and universities providing civil and criminal
6 penalties.

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

8 SECTION 1. Title 7, Civil Practice and Remedies Code, is
9 amended by adding Chapter 160 to read as follows:

10 CHAPTER 160. DISPUTE RESOLUTION BOARDS

11 SUBCHAPTER A. GENERAL PROVISIONS

12 Sec. 160.001. DEFINITION. In this chapter, "construction
13 contract" means a contract between a real property owner and a
14 contractor for the improvement of real property in this state.

15 Sec. 160.002. METHOD OF ADOPTION. A dispute arising under a
16 construction contract may be submitted to a dispute resolution
17 board in accordance with this chapter if the contract includes
18 language that reflects the intent of the parties to use the process
19 provided by this chapter.

20 Sec. 160.003. PUBLIC CONSTRUCTION CONTRACTS. Each
21 construction contract entered into by a state agency or political
22 subdivision that does not provide for submission of disputes
23 arising under the contract to a dispute resolution board under this
24 chapter must contain a provision stating that the use of dispute

1 resolution under this chapter was actively considered and rejected.

2 [Sections 160.004-160.050 reserved for expansion]

3 SUBCHAPTER B. DISPUTE RESOLUTION BOARD

4 Sec. 160.051. COMPOSITION AND SELECTION OF BOARD. (a) A
5 dispute resolution board consists of three persons selected in
6 accordance with this section.

7 (b) On or before the 15th day after the date a construction
8 contract subject to this chapter is executed, each party to the
9 contract shall select one nominee qualified to serve as a board
10 member under this chapter and communicate the name and
11 qualifications of the nominee to the other party for approval.

12 (c) A party may accept or reject the other party's
13 nomination on or before the seventh day after the date the party
14 receives notice of the nomination.

15 (d) A nominee that is not rejected during the period
16 prescribed by Subsection (c) is considered approved.

17 (e) If a nominee is rejected, the party who nominated the
18 person shall nominate another qualified person.

19 (f) Once two board members nominated by the parties are
20 accepted, those board members shall nominate a third qualified
21 person to be chairperson of the board. Each party may accept or
22 reject the nomination on or before the 15th day after the date the
23 party receives notice of the nomination. If the nominee for
24 chairperson is not rejected by one of the parties in the time
25 prescribed by this subsection, the nominee is considered accepted.
26 If the nominee is rejected by a party, the two approved board
27 members shall make additional nominations for chairperson until a

1 nomination is accepted by the parties.

2 Sec. 160.052. QUALIFICATIONS OF BOARD MEMBERS. (a) A
3 board member selected by a party to the construction contract must
4 have:

5 (1) at least 10 years of technical or managerial
6 experience in engineering, construction, or architecture; and

7 (2) experience in:

8 (A) one or more of the general types of
9 construction involved in the contract;

10 (B) the interpretation of construction contract
11 documents; and

12 (C) the analysis and resolution of construction
13 issues.

14 (b) The chairperson of the board must have:

15 (1) at least 15 years of experience in the person's
16 profession;

17 (2) at least 10 years of experience in:

18 (A) construction dispute resolution;

19 (B) adjudication;

20 (C) arbitration; or

21 (D) service as a judge; and

22 (3) competence in the interpretation of construction
23 contract documents and the analysis and resolution of construction
24 claims.

25 (c) Each person who serves on a board must have:

26 (1) experience serving on a dispute resolution board,
27 on a dispute review board, on a dispute adjudication board, or as an

1 adjudicator or judge; or

2 (2) 40 hours of classroom training in the mechanisms
3 of dispute resolution boards, construction adjudication,
4 construction arbitration, or construction mediation.

5 Sec. 160.053. CONFLICTS OF INTEREST; NEUTRALITY. (a) A
6 member of a dispute resolution board may not have any current or
7 prior involvement in the contract or construction project that is
8 the subject of the dispute that could compromise the person's
9 ability to review the dispute impartially.

10 (b) Except for providing services as a dispute resolution
11 board member, arbitrator, or mediator on a matter involving the
12 owner or contractor, a board member may not, at the time of service
13 on the board or during the two years before the person begins
14 serving on the board, have:

15 (1) employment with, an ownership interest in, or an
16 existing business or financial relationship, including the
17 provision of fee-based consulting services, with:

18 (A) a party to the contract under which the
19 dispute arises;

20 (B) a third-party construction manager for the
21 contractor;

22 (C) any subcontractor or subconsultant to the
23 contractor; or

24 (D) another contractor or construction manager
25 for the owner;

26 (2) a financial interest in the contract;

27 (3) involvement, directly or indirectly, in the

1 preparation of the bid documents for the contract or a bid by any
2 bidder for the invitation to bid for the contract; or

3 (4) involvement in the management or administration of
4 the contract.

5 (c) Except for participation in the board's activities as
6 provided by the construction contract and the board's contract
7 entered into under Section 160.054, the owner or contractor may not
8 solicit advice from or consult with the board or individual members
9 of the board on matters related to the conduct of the work under the
10 construction contract or resolution of problems under the
11 construction contract that might compromise the board's integrity.

12 (d) A board member may not advocate for a party to the
13 construction contract.

14 (e) A board member has a continuing duty to avoid conflicts
15 of interest and shall promptly disclose to the other board members
16 and the parties any matter that could reasonably give rise to a
17 perception of partiality or non-neutrality.

18 Sec. 160.054. CONTRACT WITH BOARD. (a) On or before the
19 15th day after the date the chairperson of the board is selected,
20 the board members and parties to the construction contract shall
21 execute a standard three-party agreement in which the board members
22 agree to:

23 (1) endeavor to assist the parties in preventing and
24 resolving disputes during the term of the construction contract;

25 (2) read and become familiar with all the contract
26 documents, including the specifications, plans, addenda, progress
27 schedule and updates, weekly progress reports, minutes of progress

1 meetings, change orders, and other documents relevant to the
2 performance of the contract and necessary to the board's work;

3 (3) visit the construction site as soon as practicable
4 after selection of the board and reserve at least one day each month
5 for project site visits and visit the site at least bimonthly, or
6 more frequently if beneficial; and

7 (4) keep abreast of the construction activities and
8 become familiar with the work in progress.

9 (b) The frequency, time, and duration of visits required
10 under the board's contract shall be mutually agreed on by the board,
11 owner, and contractor, or if the parties and the board do not agree,
12 scheduled by the board.

13 (c) The board shall also agree to consider, fairly and
14 impartially, each dispute referred to the board by a party to the
15 construction contract and provide written recommendations to the
16 owner and contractor based on the relevant provisions of the
17 construction contract, any applicable law, and the facts and
18 circumstances involved in the dispute. The board's recommendations
19 shall express, clearly and completely, the logic and reasoning
20 leading the board to the recommendations so that all the parties
21 fully understand and can use the recommendations to assist them in
22 negotiating a resolution of the dispute. The board's
23 recommendations may address issues of entitlement, unjust
24 enrichment, or both.

25 [Sections 160.055-160.100 reserved for expansion]

26 SUBCHAPTER C. DUTIES OF PARTIES TO CONSTRUCTION CONTRACT

27 Sec. 160.101. OWNER DUTIES. The owner shall:

1 (1) provide each board member with a copy of all
2 contract documents, including the specifications, plans, addenda,
3 progress schedule and updates, weekly progress reports, minutes of
4 progress meetings, change orders, and any other documents relevant
5 to the performance of the contract and necessary to the board's
6 work; and

7 (2) provide the board with:

8 (A) conference facilities at or near the
9 construction site; and

10 (B) secretarial and copying services.

11 Sec. 160.102. CONTRACTOR DUTIES. The contractor shall
12 furnish each board member with relevant documents prepared by the
13 contractor, such as progress schedules, to supplement the documents
14 provided by the owner.

15 [Sections 160.103-160.150 reserved for expansion]

16 SUBCHAPTER D. OPERATION OF BOARD

17 Sec. 160.151. BOARD ACTIVITY AND EXPENSES. (a) The board
18 shall be active throughout the term of the construction contract.
19 The cost of the board's activity must be included as a capital
20 expense of the project.

21 (b) The total cost of a qualified minority or historically
22 underutilized dispute resolution board administrative
23 organization, including the expense of the board members, counts
24 toward meeting all minority set-aside goals or provisions required
25 by law.

26 (c) The board shall begin operation on the written
27 authorization of the owner received after the board's contract

1 under Section 160.054 is executed and end operation at the end of
2 the term of the construction contract after the final payment due
3 under the construction contract has been made.

4 Sec. 160.152. IMMUNITY. (a) Each board member, in the
5 performance of the member's duties on the board, acts in the
6 capacity of an independent agent intended to facilitate the
7 resolution of disputes and not as an employee of the owner or the
8 contractor.

9 (b) To the fullest extent permitted by law, each board
10 member is entitled to quasi-judicial immunity for an action or
11 decision associated with the consideration, hearing, and
12 recommendation of a resolution for a dispute referred to the board.
13 Each board member shall be held harmless for any personal or
14 professional liability arising from or related to board activities.

15 (c) To the fullest extent permitted by law, the owner and
16 contractor shall indemnify each board member for claims, losses,
17 demands, costs, and damages, including reasonable attorney's fees,
18 for bodily injury, property damage, or economic loss arising out of
19 or related to the member's carrying out of board functions.
20 Indemnification provided under this subsection is a joint and
21 several obligation of the owner and the contractor.

22 Sec. 160.153. INFORMAL PROCEEDINGS AND RECOMMENDATIONS.

23 (a) The owner and contractor may agree, with respect to any issue,
24 claim, or dispute, to request that the board act in an advisory
25 capacity to assist in resolution of the issue, claim, or dispute at
26 a formal hearing before the board.

27 (b) For the purposes of an informal proceeding under this

1 section, each party shall submit a written submission not longer
2 than two written pages to the board. To the extent possible, the
3 parties shall also submit to the board written questions for the
4 board agreed to by the parties.

5 (c) On submission of an informal proceeding to the board
6 under this section, either party may request an opportunity to give
7 an oral presentation to the board, and the board may request an oral
8 presentation by the parties. An oral presentation under this
9 subsection must take place during a regularly scheduled meeting of
10 the board. Unless a time limit for oral presentations is agreed to
11 by the parties, the board shall establish a time limit for oral
12 presentations.

13 (d) The board shall present its advisory recommendation to
14 the parties orally not later than four hours after the conclusion of
15 any oral presentation by the parties.

16 (e) The parties and the board are not bound in any way by the
17 advisory recommendation, and the same matter may be heard again in a
18 formal hearing before the board.

19 (f) The parties shall agree that an advisory recommendation
20 is not admissible in any administrative or judicial proceeding for
21 any reason and may not offer or move for admission of an advisory
22 recommendation.

23 Sec. 160.154. FORMAL FINDINGS AND RECOMMENDATIONS. (a) On
24 the request of either party, the board shall conduct a formal
25 hearing in accordance with this section.

26 (b) The hearing shall be conducted by the board chairperson
27 in accordance with any dispute resolution board rules and hearing

1 procedures established by the board and with all members of the
2 board present and participating.

3 (c) The board shall allow each party to present the party's
4 position on the dispute, with the contractor presenting first.

5 (d) The board may ask any questions of the parties that the
6 board considers appropriate.

7 (e) The board may schedule continuations of the hearing from
8 time to time. The board may not accept any further submissions or
9 evidence from a party after the conclusion of the hearing unless the
10 submission or evidence is expressly requested by the board.

11 Sec. 160.155. FINDINGS AND RECOMMENDATIONS. (a) After the
12 hearing under Section 160.154 concludes, the board shall meet to
13 formulate its findings and recommendations for resolution of the
14 dispute. The board's deliberations shall be conducted in private
15 and are confidential.

16 (b) The board shall base its findings and recommendations on
17 the contract provisions and the facts and circumstances of the
18 dispute.

19 (c) The board shall make a concerted effort to reach a
20 unanimous decision but may issue its findings and recommendations
21 with the agreement of two members. The findings and
22 recommendations must be signed by all board members.

23 (d) A dissenting member shall clearly indicate the member's
24 dissent on the findings and recommendations and provide clearly
25 identified separate dissenting findings and recommendations, which
26 shall be included as part of the board's findings and
27 recommendations.

1 Sec. 160.156. TIME FOR ISSUING FINDINGS AND
2 RECOMMENDATIONS. The board shall issue its findings and
3 recommendations to the owner and the contractor on or before the
4 21st day after the date the hearing concludes or as otherwise
5 determined by the board and agreed to by the parties.

6 Sec. 160.157. EFFECT OF FINDINGS AND RECOMMENDATIONS.

7 (a) Although the purpose of the board findings and recommendations
8 is to assist the parties in negotiating a resolution of their
9 disputes, the written findings and recommendations shall be
10 admitted, unless otherwise agreed by the parties, into evidence in
11 any subsequent judicial, arbitral, or administrative proceeding.

12 (b) A board member or other participant in a board hearing
13 may not be required to testify as to what was said or presented at a
14 board meeting or any hearing, conference, or other proceeding of
15 the board.

16 Sec. 160.158. DISCLOSURE OF RECORDS. The records of a
17 dispute resolution board are not records of any government agency
18 and any records, notes, or drafts taken or made by a board member
19 are not subject to disclosure under any freedom of information law.

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