

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 78TH LEGISLATIVE REGULAR SESSION

March 31, 2003

TO: Honorable Kenny Marchant, Chair, House Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB1780 by Davis, Yvonne (Relating to payment to a subcontractor under a public work contract.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code to authorize as an alternative to litigation, negotiations and mediation between a subcontractor and prime contractor involved in a payment dispute for the provision of any public work labor or material under a public work contract. A prime contractor would be required to include in a written contract with a subcontractor a provision regarding the use of dispute resolution.

The governing body having contracted with the prime contractor for the public work would be responsible for directing a negotiation process, including setting up the negotiation meeting.

The rulemaking authority of each governmental body would be required to develop rules regarding the mediation process, or in the absence of a rulemaking authority, would be required to adopt the model rule coordinated by the State Office of Administrative Hearings (SOAH) and the Office of the Attorney General (OAG).

Provisions of the bill set out the minimum requirements of the negotiation and mediation processes and the limits on recoverable amounts and would allow for additional remedies if a resolution cannot be reached through negotiations or mediation.

SOAH and the OAG have a model in place and would therefore not incur any new costs as a result of implementation of the bill. The OAG also estimates that any new cases that might be assigned to their office could be processed using existing resources.

Based on the analysis of the Texas Department of Transportation, the Building and Procurement Commission, the State Office of Administrative Hearings, the Department of Health, the Office of the Attorney General, the Department of Criminal Justice, and the Texas A&M University System Administrative and General Offices, it is assumed that duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources. It is assumed that costs involved in developing rules and in overseeing negotiations would not be significant and that if mediation is used by the prime contractor and the subcontractor, although required to follow the government entity's rules and those contained in the provisions of the bill, that the contractor and subcontractor would pay for costs involved in mediation.

The bill would take effect September 1, 2003 and would apply only to a contract established on or after that date.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 303 Building and Procurement Commission, 360 State Office of Administrative Hearings, 501 Department of Health, 601 Department of Transportation, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices

LBB Staff: JK, RR, MW, DLBa