BILL ANALYSIS

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, the statutory timeframes for dealing with contract claims against the state are so long that resolution of such claims often does not occur for many months. Further, current law does not allow for the recovery of certain types of damages.

H.B. 1940 amends statutory provisions relating to alternative dispute resolution for contract claims against the state. The bill allows contractors to recover additional damages and expenses incurred as a result of actions by the state, and clarifies that contractors used by the state may assert a counterclaim or a right of offset. In addition, H.B. 1940 shortens the timeframes for negotiations, mediation, and counterclaims, amends the amount the state must pay for valid claims, and allows contested case decisions to be appealed when there has been an abuse of discretion.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2260.003(a) and (c), Government Code, as follows:

> (a) Prohibits the total amount of money recoverable on a claim for breach of contract under this chapter from exceeding an amount equal to the sum of certain amounts, including 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. Makes nonsubstantive changes.

> (c) Deletes existing text prohibiting any award of damages under this chapter from including consequential or similar damages or attorney's fees. Renumbers subdivisions to reflect deletions.

SECTION 2. Amends Section 2260.005, Government Code, to provide that this chapter does not prevent a contractor sued by a unit of state government from asserting a counterclaim or right of offset against the unit of state government in the court in which the unit of state government files the suit.

SECTION 3. Amends Section 2260.051(d), Government Code, to require a unit of state government to assert, in a writing delivered to the contractor, any counterclaim not later than the 60th, rather than 90th, day after the date of written notice.

SECTION 4. Amends Section 2260.052(a), Government Code, to require a negotiation to begin not later than the 60th day after the date the claim is received. Deletes existing text specifying a timeline for beginning negotiations.

SECTION 5. Amends Section 2260.056(a), Government Code, to authorize the parties to agree to mediate a claim made under this chapter before the 90th, rather than 270th, day after the claim is filed with the unit of state government and before the expiration of any extension of time under Section 2260.055 (Incomplete Resolution).

SECTION 6. Amends Section 2260.104(e), Government Code, to prohibit a decision from being appealed, except for abuse of discretion, in a contested case under this subchapter.

SECTION 7. Amends Section 2260.105, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the unit of state government to pay the amount of the claim or part of the claim under certain circumstances, including if the total amount of damages, after taking account any counterclaim, is less than 25 percent of the original contract price as adjusted by approved change orders, rather than $250,000.

(a-1) Requires the unit of state government to pay that part of the claim that is less than 25 percent of the original contract price as adjusted by approved change orders under certain circumstances.

SECTION 8. Amends Section 2260.1055(a), Government Code, to make a conforming change.

SECTION 9. Repealer: Section 2260.052(b) (relating to the delay of negotiations), Government Code.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2005.