

BILL ANALYSIS

H.B. 1940
By: Ritter
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

State entities contract with private businesses on a regular basis to perform a variety of services. If there is a breach of contract or a contract dispute, the current process for dispute resolution is lengthy and inefficient, and often ends in the dispute never being fully resolved.

House Bill 1940 amends 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 sued by the state may assert a counterclaim or a right of offset. In addition, HB 1940 shortens the time-frames 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

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Adds delays and labor related expenses to the costs that can be recovered by a contractor in a dispute with a unit of state government or a party acting under the supervision or control of the unit of state government. Removes consequential damages and attorneys fees from the list of awards that may not be included in an award of damages. Provides that Chapter 2260 does not prohibit a contractor sued by a unit of state government from filing a counterclaim or a right of offset in the court in which the unit of state government filed the suit.

Reduces the number of days a unit of state government has to respond to a counterclaim from a contractor from 90 days to 60 days. Requires a unit of state government to begin negotiations not later than the 60th day after the date the claim is received; Reduce the number of days that the parties involved may agree to mediate a claim from 270 days to 90 days. Prohibits appeal of a decision in a contested case hearing, except in cases of abuse of discretion.

Changes the amount a unit of state government is required to pay if an administrative law judge finds the claim to be valid, from \$250,000 to 25 percent of the original contract price as adjusted, and requires the unit of state government to pay the part of the claim that is less than 25 percent of the original contract price if the judge finds the claim is valid, and the total amount of damages and counterclaims equals or exceeds 25 percent of the original contract price. Requires an administrative law judge to issue a report to the legislature if the judge determines that a claim involves damages of more than 25 percent of the original contract price.

Repeals Section 2260.052(b) of the Government Code. Changes made in law by this Act do not apply to contracts entered into before the effective date of this Act.

EFFECTIVE DATE

September 1, 2005