

By: Chisum

H.B. No. 1330

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a dispute resolution program for state building construction contracts.

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

SECTION 1. Chapter 2166, Government Code, is amended by adding Subchapter M to read as follows:

SUBCHAPTER M. NONBINDING DISPUTE RESOLUTION AND AVOIDANCE

Sec. 2166.601. DEFINITION. In this subchapter, "contractor" has the meaning assigned by Section 2260.001.

Sec. 2166.602. STATE POLICY. It is the policy of this state to use alternative dispute resolution procedures as a method to avoid and attempt to resolve disputes relating to construction contracts in a prompt and efficient manner without infringing on the parties' rights to a fair and impartial hearing of the claim.

Sec. 2166.603. APPLICATION OF SUBCHAPTER. This subchapter applies to all building construction projects of the state, including projects otherwise exempted from all or part of this chapter under Section 2166.003 or 2166.004, except projects to which Section 201.112, Transportation Code, applies.

Sec. 2166.604. CONSTRUCTION WITH OTHER LAW. The program established under this subchapter is an alternative to the procedures in Chapter 2260.

Sec. 2166.605. NONBINDING DISPUTE RESOLUTION AND AVOIDANCE PROGRAM. (a) The commission by rule shall develop and implement a

1 nonbinding dispute resolution and avoidance program for use by
2 contractors and state agencies to avoid and attempt to resolve
3 disputes arising under a contract for a building construction
4 project. In developing the nonbinding dispute resolution and
5 avoidance program, the commission shall consider the size, scope,
6 and complexity of the construction projects included in the
7 program.

8 (b) The program must:

9 (1) encourage the prevention and avoidance of
10 construction project disputes through the use of partnering,
11 facilitation, dispute review boards, or other similar methods;

12 (2) promote collaborative problem solving;

13 (3) provide for the use of trained mediators and
14 facilitators to encourage settlement; and

15 (4) provide for the use of neutral third party
16 arbitrators or adjudicators to attempt to reach resolutions in a
17 prompt, fair, and efficient manner for disputes that are not
18 settled.

19 (c) The commission may contract with a dispute resolution
20 center or organization, an institution of higher education, or a
21 qualified construction industry professional to design, implement,
22 and administer the program created under this subchapter.

23 Sec. 2166.606. REQUIRED PROVISION IN BUILDING CONSTRUCTION
24 PROJECT CONTRACT. Each state agency shall include as a term of a
25 building construction project contract, including a contract for
26 the design of a building construction project, a provision stating
27 that the program created under this subchapter must, when elected

1 under Section 2166.607, be used to attempt to resolve a dispute
2 arising under the contract.

3 Sec. 2166.607. ELECTION OF PROGRAM. (a) At any time before
4 a contractor files a request for a contested case under Subchapter
5 C, Chapter 2260, to attempt to resolve a dispute arising under a
6 contract for a building construction project, the contractor may
7 elect to use the nonbinding dispute resolution program established
8 under this subchapter.

9 (b) An election to use the nonbinding dispute resolution
10 program under Subsection (a) to attempt to resolve a dispute is
11 binding on all parties to a contract for a building construction
12 project in relation to the dispute that is the basis for the
13 election.

14 Sec. 2166.608. PROGRAM USE ON OTHER PROJECTS. A state or
15 local government entity may adopt by rule the nonbinding dispute
16 resolution and avoidance program developed under this subchapter
17 for use on projects not covered by this subchapter.

18 Sec. 2166.609. SOVEREIGN IMMUNITY. This subchapter does not
19 waive sovereign immunity to suit or liability.

20 SECTION 2. Section 2260.004(a), Government Code, is amended
21 to read as follows:

22 (a) Each unit of state government that enters into a
23 contract to which this chapter applies shall include as a term of
24 the contract a provision stating that the dispute resolution
25 process used by the unit of state government under this chapter, or
26 if applicable and elected under Section 2166.607 the nonbinding
27 dispute resolution program established under Subchapter M, Chapter

1 2166, must be used to attempt to resolve a dispute arising under the
2 contract.

3 SECTION 3. Section 2260.005, Government Code, is amended to
4 read as follows:

5 Sec. 2260.005. EXCLUSIVE PROCEDURES [~~PROCEDURE~~]. Subject
6 to Section 2260.007 and Subchapter M, Chapter 2166, the procedures
7 contained in this chapter are exclusive and required prerequisites
8 to suit in accordance with Chapter 107, Civil Practice and Remedies
9 Code.

10 SECTION 4. (a) Subchapter M, Chapter 2166, Government
11 Code, as added by this Act, applies only to a contract entered into
12 on or after March 1, 2006. A contract entered into before March 1,
13 2006, is governed by the law applicable to the contract immediately
14 before that date, and that law is continued in effect for that
15 purpose.

16 (b) The Texas Building and Procurement Commission shall
17 develop and implement the program required by Subchapter M, Chapter
18 2166, Government Code, as added by this Act, not later than March 1,
19 2006.

20 SECTION 5. This Act takes effect September 1, 2005.