

By: Ritter

H.B. No. 1940

A BILL TO BE ENTITLED

AN ACT

relating to alternative dispute resolution of certain contract claims against the state.

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

SECTION 1. Sections 2260.003(a) and (c), Government Code, are amended to read as follows:

(a) The total amount of money recoverable on a claim for breach of contract under this chapter may not, after deducting the amount specified in Subsection (b), exceed an amount equal to the sum of:

(1) the balance due and owing on the contract price;

~~and~~

(2) the amount or fair market value of orders or requests for additional work made by a unit of state government to the extent that the orders or requests for additional work were actually performed; and

(3) 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.

(c) Any award of damages under this chapter may not include:

(1) ~~consequential or similar damages;~~

~~(2)~~ exemplary damages;

(2) ~~(3)~~ any damages based on an unjust enrichment

1 theory;

2 [~~(4) attorney's fees,~~] or

3 (3) [~~(5)~~] home office overhead.

4 SECTION 2. Section 2260.005, Government Code, is amended to
5 read as follows:

6 Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section
7 2260.007, the procedures contained in this chapter are exclusive
8 and required prerequisites to suit in accordance with Chapter 107,
9 Civil Practice and Remedies Code. This chapter does not prevent a
10 contractor sued by a unit of state government from asserting a
11 counterclaim or right of offset against the unit of state
12 government in the court in which the unit of state government files
13 the suit.

14 SECTION 3. Section 2260.051(d), Government Code, is amended
15 to read as follows:

16 (d) A unit of state government must assert, in a writing
17 delivered to the contractor, any counterclaim not later than the
18 60th [~~90th~~] day after the date of notice under Subsection (b). A
19 unit of state government that does not comply with this subsection
20 waives the right to assert the counterclaim.

21 SECTION 4. Section 2260.052(a), Government Code, is amended
22 to read as follows:

23 (a) The chief administrative officer or, if designated in
24 the contract, another officer of the unit of state government shall
25 examine the claim and any counterclaim and negotiate with the
26 contractor in an effort to resolve them. The [~~Except as provided by~~
27 ~~Subsection (b), the~~] negotiation must begin not later than the 60th

1 day after the [~~later of:~~
2 ~~[(1) the date of termination of the contract,~~
3 ~~[(2) the completion date in the original contract, or~~
4 ~~[(3) the]~~ date the claim is received.

5 SECTION 5. Section 2260.056(a), Government Code, is amended
6 to read as follows:

7 (a) Before the 90th [~~270th~~] day after the date the claim is
8 filed with the unit of state government and before the expiration of
9 any extension of time under Section 2260.055, the parties may agree
10 to mediate a claim made under this chapter.

11 SECTION 6. Section 2260.104(e), Government Code, is amended
12 to read as follows:

13 (e) In a contested case hearing under this subchapter:
14 (1) the decision may not be appealed except for abuse
15 of discretion; and
16 (2) the state agency may not change the finding of fact
17 or conclusion of law, nor vacate or modify an order as provided in
18 Section 2001.058(e).

19 SECTION 7. Section 2260.105, Government Code, is amended by
20 amending Subsection (a) and adding Subsection (a-1) to read as
21 follows:

22 (a) The unit of state government shall pay the amount of the
23 claim or part of the claim if:
24 (1) the administrative law judge finds, by a
25 preponderance of the evidence, that under the laws of this state the
26 claim or part of the claim is valid; and
27 (2) the total amount of damages, after taking into

1 account any counterclaim, is less than 25 percent of the original
2 contract price as adjusted by approved change orders [~~\$250,000~~].

3 (a-1) The unit of state government shall pay that part of
4 the claim that is less than 25 percent of the original contract
5 price as adjusted by approved change orders if:

6 (1) the administrative law judge finds, by a
7 preponderance of the evidence, that under the laws of this state the
8 claim or part of the claim is valid; and

9 (2) the total amount of the damages, after taking into
10 account any counterclaim, equals or exceeds 25 percent of the
11 original contract price as adjusted by approved change orders.

12 SECTION 8. Section 2260.1055(a), Government Code, is
13 amended to read as follows:

14 (a) If, after a hearing, the administrative law judge
15 determines that a claim involves damages of [~~\$250,000 or~~] more than
16 25 percent of the original contract price as adjusted by approved
17 change orders, the administrative law judge shall issue a written
18 report containing the administrative law judge's findings and
19 recommendations to the legislature.

20 SECTION 9. Section 2260.052(b), Government Code, is
21 repealed.

22 SECTION 10. The changes in law made by this Act apply only
23 to claims involving a breach of a contract entered into by a unit of
24 state government on or after the effective date of this Act. A
25 claim involving a breach of a contract entered into by a unit of
26 state government before the effective date of this Act is governed
27 by the law in effect immediately before that date, and that law is

1 continued in effect for that purpose.

2 SECTION 11. This Act takes effect September 1, 2005.