

1-1 By: Ritter (Senate Sponsor - Wentworth) H.B. No. 1940
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 13, 2005, read first time and referred to Committee on State
1-4 Affairs; May 21, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 21, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1940 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to alternative dispute resolution of certain contract
1-11 claims against the state.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Sections 2260.003(a) and (c), Government Code,
1-14 are amended to read as follows:

1-15 (a) The total amount of money recoverable on a claim for
1-16 breach of contract under this chapter may not, after deducting the
1-17 amount specified in Subsection (b), exceed an amount equal to the
1-18 sum of:

1-19 (1) the balance due and owing on the contract price;

1-20 [~~and~~]

1-21 (2) the amount or fair market value of orders or
1-22 requests for additional work made by a unit of state government to
1-23 the extent that the orders or requests for additional work were
1-24 actually performed; and

1-25 (3) any delay or labor-related expense incurred by the
1-26 contractor as a result of an action of or a failure to act by the
1-27 unit of state government or a party acting under the supervision or
1-28 control of the unit of state government.

1-29 (c) Any award of damages under this chapter may not include:

1-30 (1) consequential or similar damages, except delays or
1-31 labor-related expenses described by Subsection (a)(3);

1-32 (2) exemplary damages;

1-33 (3) any damages based on an unjust enrichment theory;

1-34 (4) attorney's fees; or

1-35 (5) home office overhead.

1-36 SECTION 2. Section 2260.005, Government Code, is amended to
1-37 read as follows:

1-38 Sec. 2260.005. EXCLUSIVE PROCEDURE. Subject to Section
1-39 2260.007, the procedures contained in this chapter are exclusive
1-40 and required prerequisites to suit in accordance with Chapter 107,
1-41 Civil Practice and Remedies Code. This chapter does not prevent a
1-42 contractor sued by a unit of state government from asserting a
1-43 counterclaim or right of offset against the unit of state
1-44 government in the court in which the unit of state government files
1-45 the suit.

1-46 SECTION 3. Section 2260.051(d), Government Code, is amended
1-47 to read as follows:

1-48 (d) A unit of state government must assert, in a writing
1-49 delivered to the contractor, any counterclaim not later than the
1-50 60th [~~90th~~] day after the date of notice under Subsection (b). A
1-51 unit of state government that does not comply with this subsection
1-52 waives the right to assert the counterclaim.

1-53 SECTION 4. Section 2260.052(a), Government Code, is amended
1-54 to read as follows:

1-55 (a) The chief administrative officer or, if designated in
1-56 the contract, another officer of the unit of state government shall
1-57 examine the claim and any counterclaim and negotiate with the
1-58 contractor in an effort to resolve them. The [~~Except as provided by~~
1-59 ~~Subsection (b), the~~] negotiation must begin not later than the
1-60 120th [~~60th~~] day after the [~~later of:~~

1-61 [~~(1) the date of termination of the contract,~~

1-62 [~~(2) the completion date in the original contract, or~~

1-63 [~~(3) the~~] date the claim is received.

2-1 SECTION 5. Section 2260.056(a), Government Code, is amended
2-2 to read as follows:

2-3 (a) Before the 120th [~~270th~~] day after the date the claim is
2-4 filed with the unit of state government and before the expiration of
2-5 any extension of time under Section 2260.055, the parties may agree
2-6 to mediate a claim made under this chapter.

2-7 SECTION 6. Section 2260.104(e), Government Code, is amended
2-8 to read as follows:

2-9 (e) In a contested case hearing under this subchapter:
2-10 (1) the decision may not be appealed except for abuse
2-11 of discretion; and

2-12 (2) the state agency may not change the finding of fact
2-13 or conclusion of law, nor vacate or modify an order as provided in
2-14 Section 2001.058(e).

2-15 SECTION 7. Section 2260.105, Government Code, is amended by
2-16 adding Subsection (a-1) to read as follows:

2-17 (a-1) The unit of state government shall pay that part of
2-18 the claim that is less than \$250,000 if:

2-19 (1) the administrative law judge finds, by a
2-20 preponderance of the evidence, that under the laws of this state the
2-21 claim or part of the claim is valid; and

2-22 (2) the total amount of the damages, after taking into
2-23 account any counterclaim, equals or exceeds \$250,000.

2-24 SECTION 8. Section 2260.052(b), Government Code, is
2-25 repealed.

2-26 SECTION 9. The changes in law made by this Act apply only to
2-27 claims involving a breach of a contract entered into by a unit of
2-28 state government on or after the effective date of this Act. A
2-29 claim involving a breach of a contract entered into by a unit of
2-30 state government before the effective date of this Act is governed
2-31 by the law in effect immediately before that date, and that law is
2-32 continued in effect for that purpose.

2-33 SECTION 10. This Act takes effect September 1, 2005.

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