

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 18, 2005

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1940 by Ritter (Relating to alternative dispute resolution of certain contract claims against the state.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The provisions of the bill would amend the Government Code relating to the resolution of certain contract claims against the state. In addition, the bill would repeal Section 2260.052(b), relating to negotiation delay. It would allow the amount of money recoverable on a claim for breach of contract to increase and it would permit a contractor to assert a counterclaim or right of offset against the unit of state government.

The provisions of the bill would also reduce the amount of time a unit of state government has to assert a counterclaim from 90 days to 60 days. The bill would repeal the 180-day delay a unit of state government has to begin negotiation of an event giving rise to the claim and would reduce the amount of time for parties to mediate a claim to 90 days from 270 days.

The bill would allow an appeal of the decision if there were an abuse of discretion and it would allow attorney's fees as part of an award of damages. Currently, there is a \$250,000 cap on the payment of a claim. The provisions would remove the cap and allow damages of up to 25 percent of the original contract price as adjusted by approved change orders.

According to the Comptroller's office, the fiscal impact would depend on future contract claims against the state. The number and amounts of which cannot be estimated and therefore, the Comptroller is unable to estimate the fiscal impact.

According to the State Office of Administration (SOAH), the provisions would not have a significant fiscal impact on SOAH, since SOAH is entitled to recover its costs in these cases. SOAH is unable to estimate the number of cases, if any, that may be brought under Chapter 2260; however, SOAH handled ten cases under this statute during fiscal year 2004.

According to the Office of the Attorney General (OAG), the provisions of the bill will increase the number of SOAH cases and the number of issues involved in SOAH cases. Because of the additional volume of work and because the contractor may go to court seeking review of the SOAH decision, the OAG will have increased responsibilities. Both the OAG's Administrative Law and Financial Litigation Divisions handle cases under Chapter 2260 authority. The OAG expects to have additional work for attorneys and related support staff. However, based on the ten cases handled by SOAH under 2004, it is anticipated that the additional workload associated with the provisions of the bill could be reasonably absorbed within the agency's current resources.

The bill would take effect September 1, 2005.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings

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