

BILL ANALYSIS

H.B. 497
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Civil Practices
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Construction Dispute Boards are a non-binding contractual alternative dispute resolution procedure, which has saved the owners and constructors of projects throughout the world millions of dollars. The purpose of this legislation is to provide statutory support for this proven construction dispute resolution mechanism and make it more readily available for use on private and public works. HB 497 defines Dispute Boards and provides a method for their voluntary adoption by the parties to a construction contract. The Bill does not require use of a Dispute Board by government entities or private parties. It educates potential public users about the existence of the Dispute Board processes for public projects, and requires the active consideration of use of a Board before rejection. The Bill does not require the use of a Board and preserves the right of the parties to a construction contract to freely choose whether or not to adopt a Dispute Board for any project, or to create any alternative mechanism that they agree meets their particular needs.

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

HB 497 amends Title 7 of the Civil Practice and Remedies Code by adding Chapter 160 for Dispute Boards. Governmental entities are not required to use a dispute board which is able to be voluntarily employed on commercial properties of 5 or more residential units, while Construction Manager-Agent contracts entered into by governmental entities under Sec. 44.031(7) and Sec. 44.037 Education Code are exempt--the use of Dispute Adjudication Boards and Combined Dispute Boards expressly limited to private works contracts and excluded on public works contracts. The legislation states a selection method for the members and Chairman of a Dispute Board, provides time periods for their selection, and two methods for remedying the failure or neglect of a party to appoint members of a Board. It also establishes the qualifications, experience and education requirements for the Board members and the Board Chairman. The legislation adopts the American Bar Association Code of Ethics for Arbitrators standards for the neutrality and independence of the Board members and Chairman, and requirements defining and prohibiting conflicts of interest. Additional stipulations concerning disclosure of any existing potential or actual conflict of interest and any that may have existed in the two (2) years prior to consideration for service on a board, and for the parties to waive such conflict and consent to the service of said person, reinforce a genuine commitment to professional conduct.

HB 497 states the duties of the Board members and Chairman of a Dispute Board, and the duties and responsibilities of the parties to the contract. It requires the Board and its members to fairly and independently assist the parties in resolving their disputes and provides a statement of the contents and effect of a Dispute Board recommendation. It recognizes the quasi-judicial function of a Dispute Board, defines the operation and cost of the Board and provides for the immunity from liability of the Board members for their work.

HB 497 requires the Board to base all recommendations and findings on the provisions of the contract. It establishes procedures for the Dispute Board to follow for the informal consideration of issues, the making and effect of an informal recommendation, and the requirement that any informal recommendations be issued within four (4) hours. The bill also defines the procedures

for the Dispute Board to follow when considering disputes submitted for formal written recommendations, their effect, and specifies that formal recommendations are to be issued by the Board within twenty one (21) days.

HB 497 provides procedures for parties to indicate that they have specifically chosen to adopt and use certain of the newest versions of Dispute Boards based on the International Chamber of Commerce world standard models or the ICC mechanisms and administration. It provides methods to ensure the knowing and informed choice to agree, adopt and use Dispute Adjudication Boards and/or Combined Dispute Boards and specifically excludes public works from using such Boards. The procedures and effect of these Boards activities are defined with methods for the parties to resort to arbitration or litigation for the final determination of any dispute.

Finally, HB 497 recognizes the quasi-judicial nature of the Boards and provides that the records of a Board and the notes, drafts and records made by a Board member are not subject to disclosure.

EFFECTIVE DATE

September 1, 2007