

BILL ANALYSIS

Senate Research Center

H.B. 826
By: Greenberg (Wentworth)
State Affairs
5/4/1999
Engrossed

DIGEST

Currently, the Texas Alternative Dispute Resolution (ADR) Act governs court-ordered use of ADR and the Government Dispute Resolution Act applies to state agency use of ADR. The ability of local governments to use ADR when it is not ordered remains unclear. H.B. 826 sets forth provisions regarding alternative dispute resolution proceedings for governmental bodies.

PURPOSE

As proposed, H.B. 826 sets forth provisions regarding alternative dispute resolution proceedings for governmental bodies.

RULEMAKING AUTHORITY

Rulemaking authority is granted to each unit of state government with rulemaking authority in SECTION 5 (Section 2260.052(c), Government Code) and to the chief administrative law judge of the State Office of Administrative Hearings in SECTION 5 (Section 2260.103(c), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Redesignates Chapter 2008, Government Code, as Chapter 2009, Government Code, and amends as follows:

Chapter 2009. New heading: ALTERNATIVE DISPUTE RESOLUTION FOR USE BY
GOVERNMENTAL BODIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2009.001. SHORT TITLE. Redesignated from Section 2008.001.

Sec. 2009.002. POLICY. Provides that it is the policy of this state that disputes before governmental bodies, rather than state agencies, be resolved as fairly and expeditiously as possible. Makes a conforming change.

Sec. 2009.003. DEFINITIONS. Defines “governmental body.” Makes conforming changes.

Sec 2009.004. New heading: CONTRACTS; BUDGETING FOR COSTS. Authorizes a state agency to use money budget for certain costs to pay for costs incurred under Subsection (a). Makes conforming and nonsubstantive changes.

Sec. 2009.005. SOVEREIGN IMMUNITY. Makes a conforming change.

SUBCHAPTER B. ALTERNATIVE DISPUTE RESOLUTION

Sec. 2009.051. DEVELOPMENT AND USE OF PROCEDURES. Requires alternative dispute resolution (ADR) procedures developed and used by a state agency to be consistent with the administrative procedure law. Makes conforming and nonsubstantive changes.

Sec. 2009.052. SUPPLEMENTAL NATURE OF PROCEDURES. Prohibits this chapter from being applied in a manner that denies a person a right granted under a local charter, ordinance, or other similar law. Makes conforming and nonsubstantive changes.

Sec. 2009.053. IMPARTIAL THIRD PARTIES. Authorizes the administrative law judge to appoint the impartial third parties when a State Office of Administrative Hearings (SOAH) administrative law judge has issued an order referring a case involving a state agency to an ADR procedure under Section 2003.042(a)(5), rather than 2003.042(5). Authorizes a state agency to obtain the services of a qualified third party through an agreement with the SOAH. Requires the impartial third party to possess the qualifications required under Section 154.052, Civil Practice and Remedies Code. Makes conforming and nonsubstantive changes.

Sec. 2009.054. CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. Makes conforming and standard recodification changes.

Sec. 2009.055. New heading: SHARING OF INFORMATION; CONSISTENCY OF PROCEDURES. Makes conforming changes.

SECTION 2. Amends Section 154.073, Civil Practice and Remedies Code, as follows:

Sec. 154.073. New heading: CONFIDENTIALITY OF CERTAIN RECORDS AND COMMUNICATIONS. Provides that a final written agreement to which a governmental body is a signatory that is reached as a result of a dispute resolution procedure conducted under this chapter is subject to or excepted from required disclosure in accordance with Chapter 552, Government Code. Authorizes to issue of confidentiality of records to be presented to the court in camera. Makes conforming changes.

SECTION 3. Amends Section 2003.001(2), Government Code, to redefine “alternative dispute resolution procedure.”

SECTION 4. Amends Section 2003.042(a), Government Code, to make conforming changes.

SECTION 5. Amends Title 10F, Government Code, by adding Chapter 2260, as follows:

CHAPTER 2260. RESOLUTION OF CERTAIN CONTRACT CLAIMS AGAINST THE STATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2260.001. DEFINITIONS. Defines “contract,” “contractor,” “institution of higher education,” and “unit of state government.”

Sec. 2260.002. APPLICABILITY. Provides that this chapter does not apply to a claim for personal injury or wrongful death arising from the breach of a contract.

Sec. 2260.003. DAMAGES. Sets forth the amount of damages that may be recovered on a claim for breach of contract under this chapter and amounts to be deducted from the recovery.

Sec. 2260.004. REQUIRED CONTRACT PROVISION. Requires each unit of state government that enters into a contract to which this chapter applies to include as a term of the contract a provision stating that the dispute resolution process used by the unit of state government must be used to attempt to resolve a dispute arising under the contract. Requires the attorney general to provide assistance to a unit of state government in developing the contract provision required by this section.

Sec. 2260.005. EXCLUSIVE PROCEDURE. Provides that the procedures contained in this chapter are exclusive and required prerequisites to suit in accordance with Chapter 107, Civil Practice and Remedies Code.

Sec. 2260.006. SOVEREIGN IMMUNITY. Provides that this chapter does not waive sovereign immunity to suit or liability.

SUBCHAPTER B. NEGOTIATION OF CLAIM

Sec. 2260.051. CLAIM FOR BREACH OF CONTRACT; NOTICE. Authorizes a contractor to make a claim against a unit of state government for breach of contract and authorizes the unit

of state government to assert a counterclaim. Sets forth provisions regarding notice of a claim or counterclaim.

Sec. 2260.052. NEGOTIATION. Sets forth provisions regarding negotiation of a claim or counterclaim. Requires each unit of state government with rulemaking authority to develop rules to govern the negotiation of a claim under this section. Requires a unit of state government to follow the rules adopted by the attorney general if the unit does not have rulemaking authority.

Sec. 2260.053. PARTIAL RESOLUTION OF CLAIM. Requires the parties to reduce an agreement or settlement to writing and to sign the agreement or settlement if some disputed issues are resolved. Provides that partial settlement or resolution of a claim does not waive a party's rights under this chapter as to the parts of the claim that are not resolved.

Sec. 2260.054. PAYMENT OF CLAIM FROM APPROPRIATED FUNDS. Sets forth provisions for paying a claim from appropriated funds.

Sec. 2260.055. INCOMPLETE RESOLUTION. Authorizes a contractor, unless the parties agree in writing to an extension, to file a request for a hearing under Subchapter C, if a claim is not entirely resolved within a certain time.

SUBCHAPTER C. CONTESTED CASE HEARING

Sec. 2260.101. DEFINITION. Defines "office."

Sec. 2260.102. REQUEST FOR HEARING. Authorizes a contractor to file a request for a hearing with the unit of state government if a contractor is not satisfied with the results of negotiation. Sets forth requirements for the request. Requires the unit of state government to refer the claim to the SOAH for a contested case hearing as to the issues raised in the request.

Sec. 2260.103. HEARING FEE. Sets forth provisions regarding a fee to be charged for a hearing under this subchapter. Authorizes the chief administrative law judge of the office, by rule, to establish a graduated fee scale, increasing the fee in relation to the amount in controversy.

Sec. 2260.104. HEARING. Sets forth provisions regarding the conduct of a hearing and issuance of a decision. Prohibits a person from appealing the decision.

Sec. 2260.105. PAYMENT OF CLAIM. Sets forth provisions regarding payment of the claim or part of the claim by a unit of state government if the administrative law judge finds, by a preponderance of the evidence, that under the laws of this state the claim or part of the claim is valid.

Sec. 2260.106. PREJUDGMENT INTEREST. Provides that Chapter 304, Finance Code, applies to a judgment awarded to a claimant under this chapter, except that the applicable rate of interest may not exceed 6 percent.

Sec. 2260.107. EXECUTION ON STATE PROPERTY NOT AUTHORIZED. Provides that this chapter does not authorize execution on property owned by the state or a unit of state government.

SECTION 6. (a) Effective date: immediately, except as provided by Subsection (b) of this SECTION.

(b) Effective date of SECTIONS 1 - 4 of this Act: September 1, 1999.

SECTION 7. Makes application of Chapter 2009, Government Code, as amended and redesignated by this Act, prospective.

SECTION 8. Makes application of Chapter 2260, as added by this Act, retroactive. Requires a claimant to provide written notice to the unit of state government for a claim pending before the effective date of this Act not later than the 180th day after that date, notwithstanding Section 2260.051(b), Government Code, as added by this Act.

SECTION 9. Provides that Chapter 2260, Government Code, as added by this Act, does not apply to

certain claims or disputes.

SECTION 10. Emergency clause.