

GOVERNMENT CODE

CHAPTER 2260. RESOLUTION OF CERTAIN CONTRACT CLAIMS AGAINST THE STATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2260.001. DEFINITIONS. In this chapter:

(1) "Contract" means a written contract between a unit of state government and a contractor for goods or services, or for a project as defined by Section 2166.001. The term does not include a contract subject to Section 201.112, Transportation Code.

(2) "Contractor" means an independent contractor who has entered into a contract directly with a unit of state government. The term does not include:

(A) a contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a contractor;

(B) an employee of a unit of state government; or

(C) a student at an institution of higher education.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(4) "Unit of state government" means the state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.002. APPLICABILITY. This chapter does not apply to:

(1) a claim for personal injury or wrongful death arising from the breach of a contract; or

(2) a contract executed or awarded on or before August 30, 1999.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 14.07, eff. Sept. 1, 2001.

Sec. 2260.003. DAMAGES. (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;

(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.

(b) Any amount owed the unit of state government for work not performed under a contract or in substantial compliance with its terms shall be deducted from the amount in Subsection (a).

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

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

(2) exemplary damages;

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

(4) attorney's fees; or

(5) home office overhead.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Amended by Acts 2001, 77th Leg., ch. 1272, Sec. 8.01, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 14.08, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 988, Sec. 1, eff. Sept. 1, 2005.

Sec. 2260.004. REQUIRED CONTRACT PROVISION. (a) Each unit of state government that enters into a contract to which this chapter applies shall include as a term of the contract a provision stating that the dispute resolution process used by the unit of state government under this chapter must be used to attempt to resolve a dispute arising under the contract.

(b) The attorney general shall provide assistance to a unit of state government in developing the contract provision required by this section.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

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

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 72, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1272, Sec. 8.02, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 14.09, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 988, Sec. 2, eff. Sept. 1, 2005.

Sec. 2260.006. SOVEREIGN IMMUNITY. This chapter does not waive sovereign immunity to suit or liability.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.007. LEGISLATIVE AUTHORITY RETAINED; INTERPRETATION OF CHAPTER. (a) Notwithstanding Section 2260.005, the legislature retains the authority to deny or grant a waiver of immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not and may not be interpreted to:

(1) divest the legislature of the authority to grant permission to sue a unit of state government on the terms, conditions, and procedures that the legislature may specify in the measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit in any way the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 73, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1272, Sec. 8.03, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 14.10, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 9.021, eff. Sept. 1, 2003.

SUBCHAPTER B. NEGOTIATION OF CLAIM

Sec. 2260.051. CLAIM FOR BREACH OF CONTRACT; NOTICE. (a) A contractor may make a claim against a unit of state government for breach of a contract between the unit of state government and the contractor. The unit of state government may assert a counterclaim against the contractor.

(b) A contractor must provide written notice to the unit of state government of a claim for breach of contract not later than the 180th day after the date of the event giving rise to the claim.

(c) The notice must state with particularity:

(1) the nature of the alleged breach;

(2) the amount the contractor seeks as damages; and

(3) the legal theory of recovery.

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

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999. Amended by Acts 2005, 79th Leg., ch. 988, Sec. 3, eff. Sept. 1, 2005.

Sec. 2260.052. NEGOTIATION. (a) The chief administrative officer or, if designated in the contract, another officer of the unit of state government shall examine the claim and any counterclaim and negotiate with the contractor in an effort to resolve them. The negotiation must begin not later than the 120th day after the date the claim is received.

(b) Repealed by Acts 2005, 79th Leg., ch. 988, Sec. 8.

(c) Each unit of state government with rulemaking authority shall develop rules to govern the negotiation and mediation of a claim under this section. If a unit of state government does not have rulemaking authority, that unit shall follow the rules adopted by the attorney general. A model rule for negotiation and mediation under this chapter shall be provided for voluntary adoption by units of state government through the coordinated efforts of the State Office of Administrative Hearings and the office of the attorney general.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.
Amended by Acts 2005, 79th Leg., ch. 988, Sec. 4, 8, eff. Sept. 1, 2005.

Sec. 2260.053. PARTIAL RESOLUTION OF CLAIM. (a) If the negotiation under Section 2260.052 results in the resolution of some disputed issues by agreement or in a settlement, the parties shall reduce the agreement or settlement to writing and each party shall sign the agreement or settlement.

(b) A 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.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.054. PAYMENT OF CLAIM FROM APPROPRIATED FUNDS. A unit of state government may pay a claim resolved in accordance with this subchapter only from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim or settlement, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.055. INCOMPLETE RESOLUTION. If a claim is not entirely resolved under Section 2260.052 on or before the 270th day after the date the claim is filed with the unit of state government, unless the parties agree in writing to an extension of time, the contractor may file a request for a hearing under Subchapter C.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.056. MEDIATION. (a) Before the 120th day after the date the claim is filed with the unit of state government and before the expiration of any extension of time under Section 2260.055, the parties may agree to mediate a claim made under this chapter.

(b) The mediation shall be conducted in accordance with rules adopted under Section 2260.052(c).

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.
Amended by Acts 2005, 79th Leg., ch. 988, Sec. 5, eff. Sept. 1, 2005.

SUBCHAPTER C. CONTESTED CASE HEARING

Sec. 2260.101. DEFINITION. In this subchapter, "office" means the State Office of Administrative Hearings.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.102. REQUEST FOR HEARING. (a) If a contractor is not satisfied with the results of negotiation with a unit of state government under Section 2260.052, the contractor may file a request for a hearing with the unit of state government.

(b) The request must:

(1) state the factual and legal basis for the claim;
and

(2) request that the claim be referred to the State Office of Administrative Hearings for a contested case hearing.

(c) On receipt of a request under Subsection (a), the unit of state government shall refer the claim to the State Office of Administrative Hearings for a contested case hearing under Chapter 2001, Government Code, as to the issues raised in the request.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.103. HEARING FEE. (a) The chief administrative law judge of the office may set a fee for a hearing before the office under this subchapter.

(b) The chief administrative law judge of the office shall set the fee in an amount that:

(1) is not less than \$250; and

(2) allows the office to recover all or a substantial part of its costs in holding hearings.

(c) The chief administrative law judge of the office by rule may establish a graduated fee scale, increasing the fee in relation to the amount in controversy.

(d) The office may:

(1) assess the fee against the party who does not prevail in the hearing; or

(2) apportion the fee against the parties in an equitable manner.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.104. HEARING. (a) An administrative law judge of the office shall conduct a hearing in accordance with the

procedures adopted by the chief administrative law judge of the office.

(b) Within a reasonable time after the conclusion of the hearing, the administrative law judge shall issue a written decision containing the administrative law judge's findings and recommendations.

(c) The administrative law judge shall base the decision on the pleadings filed with the office and the evidence received.

(d) The decision must include:

(1) the findings of fact and conclusions of law on which the administrative law judge's decision is based; and

(2) a summary of the evidence.

(e) In a contested case hearing under this subchapter:

(1) the decision may not be appealed except for abuse of discretion; and

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

(f) Subchapter G, Chapter 2001, does not apply to a hearing under this section.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999. Amended by Acts 2005, 79th Leg., ch. 988, Sec. 6, eff. Sept. 1, 2005.

Sec. 2260.105. PAYMENT OF CLAIM. (a) The unit of state government shall pay the amount of the claim or part of the claim if:

(1) 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; and

(2) the total amount of damages, after taking into account any counterclaim, is less than \$250,000.

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

(1) 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; and

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

(b) A unit of state government shall pay a claim under this subchapter from money appropriated to it for payment of contract claims or for payment of the contract that is the subject of the claim. If money previously appropriated for payment of contract claims or payment of the contract is insufficient to pay the claim, the balance of the claim may be paid only from money appropriated by the legislature for payment of the claim.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999. Amended by Acts 2005, 79th Leg., ch. 988, Sec. 7, eff. Sept. 1, 2005.

Sec. 2260.1055. REPORT AND RECOMMENDATION TO LEGISLATURE. (a) If, after a hearing, the administrative law judge determines that a claim involves damages of \$250,000 or more, the administrative law judge shall issue a written report containing the administrative law judge's findings and recommendations to the legislature.

(b) The administrative law judge may recommend that the legislature:

(1) appropriate money to pay the claim or part of the claim 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; or

(2) not appropriate money to pay the claim and that consent to suit under Chapter 107, Civil Practice and Remedies Code, be denied.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.106. PREJUDGMENT INTEREST. 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 six percent.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

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

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.

Sec. 2260.108. DEFENSE BY ATTORNEY GENERAL. (a) The attorney general shall defend a unit of state government in a

contested case hearing covered by this chapter.

(b) The attorney general may settle or compromise the portion of a claim that may result in state liability under this chapter.

Added by Acts 1999, 76th Leg., ch. 1352, Sec. 9, eff. Aug. 30, 1999.