

- SUBJECT:** Alternative dispute resolution for state building construction contracts
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 8 ayes — Swinford, Miller, B. Cook, Farrar, J. Keffer, Martinez Fischer, Villarreal, Wong
- 0 nays
- 1 absent — Gattis
- WITNESSES:** For — Steve Nelson, Associated General Contractors
- Against — None
- BACKGROUND:** Government Code, ch. 2660, establishes procedures for resolving contract claims against the state. In general, a contractor who makes a claim against the state first must negotiate with the agency then, if an agreeable settlement cannot be reached, may request a contested case hearing with the State Office of Administrative Hearings (SOAH).
- DIGEST:** CSHB 1330 would add dispute resolution provisions to the statutes governing state construction contracts, except transportation projects. It would establish that the state favors alternative dispute resolution as an alternative to the procedures in Government Code ch. 2660.
- State construction contractors could choose to use binding alternative dispute resolution at any time before filing for a contested case hearing. That option would be included in all state construction contracts entered into on or after March 1, 2006.
- The Texas Building and Procurement Commission (TBPC) would establish by March 1, 2006, an alternative dispute resolution program with the goals of preventing disputes, promoting collaborative problem solving, offering the services of trained mediators, and using third-party arbitrators. TBPC could contract with an other organization to implement the program.
- The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 1330 would allow for binding dispute resolution as an alternative to negotiation with the agency and SOAH hearings. Alternative dispute resolution should be an option for state construction contractors because it can be a faster and more efficient way to come to a resolution than the options in current statute. Negotiating with a state agency can be difficult and time-consuming, and the SOAH hearing process can add time and expense to resolving a contract dispute.

Standardizing the dispute resolution process among agencies also would benefit contractors because the negotiation provisions allowed by current law are implemented by agency rule and can vary widely.

This bill would not make alternative dispute resolution mandatory — it would be up to the contractor to choose it. The existing provisions in statute regarding SOAH hearings still would be available to contractors who chose to go that route.

**OPPONENTS
SAY:**

The bill would not adequately protect the state's interests and could open the door to a significant number of additional claims. Only the contractor could choose binding alternative dispute resolution — the state would not have the same option. Also, the definition of contractor in this bill would include subcontractors, vendors, and others who currently are not authorized to bring a claim against the state. The definition of contractor for the current process explicitly excludes subcontractors or other people furnishing goods or services to a contractor.

The bill also could leave contractors in a bind if there were insufficient funds to pay a settlement or judgment. Under current statute, the financial obligations of the state are spelled out if a SOAH hearing determines an award for the contractor. If the agency has the funds, it must pay them; otherwise the matter must be decided by the Legislature. Because agencies only can spend what they are appropriated, this ensures that there is a mechanism for awards to be paid. This bill would not include any procedures for payment, which could leave contractors with a successful award and no money.

NOTES: The committee substitute definition of contractor is more expansive than that contained in the filed version. Also the substitute would not apply to transportation projects and states when alternative dispute resolution could be chosen and by whom.