

BILL ANALYSIS

Senate Research Center

S.B. 175
By: Barrientos
Jurisprudence
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As Filed

DIGEST

Currently, Texas law does not require units of state government to include an alternative dispute resolution (ADR) clause in contracts the unit enters into with private entities. This means the only recourse for many businesses which have contract disputes with state agencies is to seek relief through the court system. According to the state auditor's office, ADR is increasingly being used by state agencies to solve contract disputes and avoid costly litigation and claims. However, many state agencies have not adopted ADR policies or incorporated ADR provisions in state contracts. This bill will require units of state governments, when entering into contracts with other persons, to include an alternative dispute resolution clause in the contract.

PURPOSE

As proposed, S.B. 175 will require units of state government to include an alternative dispute resolution clause in contracts the unit enters into with other persons.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the State Office of Administrative Hearings in SECTION 1 (Section 111.004(a), Chapter 111, Title 5, Civil Practice and Remedies Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 111, as follows:

CHAPTER 111. RESOLUTION OF CONTRACT CLAIMS AGAINST THE STATE

Sec. 111.001. DEFINITION. Defines "unit of state government" (unit).

Sec. 111.002. ALTERNATIVE DISPUTE RESOLUTION PROCESS. Requires each unit that enters into a written contract with another person to develop an alternative dispute resolution process under which disputes arising under a contract may be informally resolved. Sets forth the requirements for the alternative dispute resolution process. Authorizes the alternative dispute resolution process to include arbitration or mediation or any other similar process. Authorizes the unit to use an alternative dispute resolution process developed by the State Office of Administrative Hearings (SOAH) under Section 111.004, instead of developing an alternative dispute resolution process.

Sec. 111.003. REQUIRED CONTRACT PROVISION. Requires each unit that enters into a written contract with another person to include as a term of the contract a provision stating that the alternative dispute resolution process used by the unit under this chapter must be used to attempt to resolve a dispute arising under the contract. Requires the attorney general to provide assistance to a unit in developing the contract provision required by this section.

Sec. 111.004. MODEL ALTERNATIVE DISPUTE RESOLUTION PROCESSES. Requires SOAH, by rule, to adopt a model alternative dispute resolution process to be used by units to comply with Section 111.002. Authorizes SOAH to develop more than one model process. Requires SOAH to consult with the Center for Public Policy Dispute Resolution at the University of Texas, the General Services Commission, and any other

person SOAH considers appropriate, in developing a model dispute resolution process.

SECTION 2. Effective date: September 1, 1997.

Makes application of this Act prospective to January 1, 1998.

SECTION 3. Requires SOAH to develop at least one model alternative dispute resolution process, as required by Section 111.004, Civil Practice and Remedies Code, as added by this Act, not later than December 1, 1997.

SECTION 4. Emergency clause.