

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 663

(Delegate Benson, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

Procurement - Contract Claim Disputes - Alternative Dispute Resolution Pilot
Program

This bill expands the types of contracts for which the Board of Contract Appeals (BCA) can award contractors the reasonable costs stemming from filing a contract claim from just construction contracts to all procurement contracts. It also requires the Office of the Attorney General (OAG) to establish an alternative dispute resolution pilot program to resolve contract claims for all procurement contracts. The program must include a provision that allows State contractors to make a contract claim without representation by an attorney. On or before January 1, 2009, OAG, in consultation with State procurement units, must report to the Governor and the General Assembly on the program's effectiveness. In addition, OAG must report annually, by January 1, on the program's operation to the appropriate committees of the General Assembly.

The bill terminates September 30, 2009.

Fiscal Summary

State Effect: General and special fund expenditures could increase to the extent that the bill results in more contract claims being filed against the State; these increases cannot be reliably estimated. OAG can develop the alternative dispute resolution program and provide the required reports with existing resources.

Local Effect: None.

Small Business Effect: Potentially meaningful. This bill could make it easier for a small business with limited resources to file a contract claim if it believes it has been treated unfairly during a State contract.

Analysis

Current Law/Background: BCA is an independent State agency responsible for hearing and deciding most appeals arising from procurement protests or contract claims.

BCA may reimburse a contractor for any reasonable costs associated with filing and pursuing a contract claim only for construction contracts, (not all procurement contracts).

A contract claim arises when a firm under contract with a State agency believes that the State has not abided by the terms of the contract, particularly related to performance, breach, modification, or termination of the contract.

A claim is submitted to a procurement officer, who negotiates with the affected party to try to arrive at a satisfactory resolution. If the procurement officer is unable to reach a satisfactory resolution, the procurement officer issues a written decision. The decision is subject to immediate review by the head of the department in which the procurement unit is located as well as by the agency director. The result of this review is considered the agency's final action. The party that submitted the protest or claim may then appeal the agency's final action to BCA.

State Fiscal Effect: The bill could encourage more contractors to file contract claims if they can do so inexpensively (*i.e.*, without retaining an attorney). If that occurs, more contract claims could lead to more payments by the State to aggrieved contractors. In addition, the bill expands the types of procurement contracts subject to contract claims. Both of these factors could increase State costs considerably, in future years; this impact cannot be reliably estimated at this time.

Additional Information

Prior Introductions: HB 395 of 2003, a similar bill, passed the House with amendments and was heard by the Senate Education, Health, and Environmental Affairs Committee. No further action was taken.

Cross File: SB 417 (Senator Conway, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Board of Contract Appeals, Office of the Attorney General, Department of Legislative Services

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