

SENATE RESOLUTION NO. 169

BY SENATOR WHEAT

A RESOLUTION

To direct the Department of Transportation and Development to establish and study a two-year pilot program for the use of dispute review boards on certain highway and transportation construction projects beginning in the state fiscal year commencing July 1, 2026, and to report to the Senate Committee on Transportation, Highways and Public Works concerning implementation and results of the pilot program.

WHEREAS, disputes arising during highway and transportation construction projects can delay work, increase costs, strain project relationships, and lead to claims or litigation after project completion; and

WHEREAS, resolving disputes while work is ongoing can preserve project momentum, improve documentation, and allow disagreements to be addressed while the relevant facts, records, personnel, and field conditions remain current; and

WHEREAS, a dispute review board is an independent panel composed of at least three members established at the beginning of a construction project to assist the owner and contractor in avoiding disputes and resolving disputes early through informed, neutral, project-specific recommendations; and

WHEREAS, dispute review boards are particularly useful on large, complex, or high-risk transportation projects involving disputes concerning contract interpretation, extra work, differing site conditions, quantities, payment, delay, acceleration, disruption, and other matters arising out of contract performance; and

WHEREAS, a dispute review board process is advisory and nonbinding, preserves the rights and defenses of the Department of Transportation and Development and its contractors, and does not alter, amend, or expand the terms of the construction contract; and

WHEREAS, the Department of Transportation and Development should evaluate

best practices used by other state transportation agencies and follow the example of fifteen state departments of transportation around the country that have used dispute review board processes or similar dispute avoidance and resolution procedures on transportation construction projects; and

WHEREAS, a two-year pilot program, commencing in the state fiscal year on July 1, 2026, allows the department to test dispute review board procedures, evaluate costs and benefits, and collect meaningful data concerning dispute avoidance, claims reduction, project delivery, and litigation prevention; and

WHEREAS, the pilot program may include at least five projects per fiscal year to ensure the department has sufficient experience and data to evaluate the process across different project types, regions, contract values, and levels of complexity.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby direct the Department of Transportation and Development to study, establish and implement a dispute review board pilot program for two years, for appropriate highway and transportation construction projects, beginning during the state fiscal year commencing July 1, 2026, continuing for not less than two fiscal years, with no less than five projects per fiscal year.

BE IT FURTHER RESOLVED that the department select pilot projects based on criteria established by the department, including contract value, complexity, risk, project duration, delivery method, or other factors relevant to the likelihood of construction disputes.

BE IT FURTHER RESOLVED that the department include dispute review board requirements in the advertisement, special provisions, proposal, or contract documents for each selected pilot project, including a "pay item" or other contract mechanism identifying when a dispute review board will be used.

BE IT FURTHER RESOLVED that each dispute review board consist of members selected from a roster of qualified and independent candidates maintained by the department in consultation with representatives of the transportation construction industry and other appropriate stakeholders including:

- (1) One member selected by the department.
- (2) One member selected by the contractor.

(3) One member selected by the first two members who will serve as chairman.

(4) Other members, if mutually agreed upon, may be added and removed as necessary.

BE IT FURTHER RESOLVED that dispute review board members shall have relevant experience in heavy, highway, bridge, or transportation construction, construction management, contract administration, claims analysis, engineering, scheduling, or dispute resolution; be free from disqualifying conflicts of interest; and be bound by a standard agreement governing ethics, duties, confidentiality, disclosure obligations, compensation, and procedures.

BE IT FURTHER RESOLVED that the dispute review board may review disputes concerning contract interpretation, payment, extra work, differing site conditions, quantity disputes, delays, acceleration, disruption, and other matters arising out of contract performance, but should not have authority to change or amend a contract, decide tort or third-party claims, determine matters beyond the legal authority of the department, or determine the validity of statutes, regulations, or public policy.

BE IT FURTHER RESOLVED that the department is directed to provide procedures for early orientation meetings, regular project meetings or site visits, referral of unresolved disputes, submission of position papers and supporting documents, informal hearings, written recommendations, and written acceptance or rejection of recommendations by the parties.

BE IT FURTHER RESOLVED that the department is directed to consider whether dispute review board review should be made a contractual condition precedent to formal claims, arbitration, or litigation for disputes within the board's scope, unless waived in writing by both the department and the contractor for a specific dispute.

BE IT FURTHER RESOLVED that participation in a dispute review board process will not automatically extend legal or contractual deadlines, waive claim preservation requirements, or waive any rights or defenses unless expressly provided by contract or law.

BE IT FURTHER RESOLVED that the department is directed to designate a dispute review board program administrator to maintain the roster, standardize agreements and procedures, coordinate training, collect data, and evaluate program performance.

BE IT FURTHER RESOLVED that the department is directed to submit a written interim report not later than March 1, 2027, concerning the department's progress, selected pilot projects, project selection criteria, candidate qualification criteria, standard contract provisions, anticipated costs, and implementation schedule and submit a final report not later than June 30, 2028, concerning the results of the pilot program, including the number and type of projects included, the number and type of disputes referred to dispute review boards, program costs, timeliness of recommendations, acceptance or rejection of recommendations, any observed reduction in claims or litigation, and the department's recommendation as to whether the program should be continued, modified, expanded, or made permanent to the president of the Senate, the Senate Committee on Transportation, Highways and Public Works, and the David R. Poynter Legislative Research Library as required by R.S. 24:771 and 772.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the secretary of the Department of Transportation and Development.

---

PRESIDENT OF THE SENATE