

SUBJECT: Agreements for the payment of subcontractors

COMMITTEE: Business and Industry — favorable, with amendment

VOTE: 6 ayes — Brady, Corte, Eiland, Giddings, Rhodes, Solomons
0 nays
3 absent — Brimer, Crabb, Janek

SENATE VOTE: On final passage, May 10 — voice vote (Zaffirini recorded nay)

WITNESSES: None

DIGEST: SB 662, as amended, would allow a subcontractor to cease providing labor, service or materials required under a contract with an original contractor in which payment to the subcontractor is conditioned on payment by a property owner to an original contractor. The provision would apply if the property owner had not paid the original contractor by the 35th day following the date on which the subcontractor had invoiced the original contractor that work had been satisfactorily completed and the original contractor had invoiced the owner for the subcontractor's work.

The subcontractor could sue the owner of the property on which the subcontractor worked for all unpaid payments owed to the subcontractor if the owner had not paid the original contractor. However, the owner would be able to subtract from any claims brought by the subcontractor the costs of any labor, services or materials the subcontractor furnished that did not comply with the requirements of the original contract. The owner would also not be liable to the original contractor for any payments made to the subcontractor.

The rights and remedies granted to the subcontractor by this bill would be in addition to, not in lieu of, any other rights and remedies available.

SB 662 would not apply to contracts undertaken by the Texas Department of Transportation or to a contract or agreement for the construction of a one-family to four-family dwelling.

**SUPPORTERS
SAY:**

Conditional payment or "pay-if-paid" clauses in construction contracts provide that a general contractor does not have to pay its subcontractor until the general contractor is paid, even if the subcontractor has properly performed agreed-on work. Such clauses unfairly prevent subcontractors from getting paid for work they have properly performed. SB 662 would provide that a subcontractor who had properly performed work would have the right to be paid by the owner to be reimbursed for the labor and materials expended on the project.

**OPPONENTS
SAY:**

SB 662's provisions should be extended to protect subcontractors who work on small residential projects and public highways. Omitting them is hardly fair, as subcontractors on these projects need the same protection that their counterparts in other areas of the construction industry would receive.

**OTHER
OPPONENTS
SAY:**

SB 662 would better protect property owners if the owners would be allowed to subtract from any claims brought by the subcontractor the costs associated with the subcontractor not completing the work under contract. SB 662 would only allow property owners to subtract the costs of any labor, services or materials that the subcontractor furnished that did not comply with the requirements of the original contract.

SB 662 should also give original contractors the same rights it gives to subcontractors to receive payment from property owners if the original contractors have properly performed their work.