

BILL ANALYSIS

Senate Research Center
78R5804 QS-D

S.B. 551
By: Harris
Jurisprudence
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As Filed

DIGEST AND PURPOSE

Generally, liens are prioritized on a first filing basis. However, this is not the case for mechanic's liens. Mechanic's liens arise on the date work commences and do not need to be filed to take precedence over other liens. Problems arise when construction financing is needed after the inception of work because some banks may not want to provide construction financing due to the fact that their lien will not have first priority. As proposed, S.B. 551 provides that the time of inception of a mechanic's lien is the agreed commencement date of the work stated in an affidavit of commencement. This bill also requires an affidavit of commencement to be filed if the owner obtains third-party financing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 53.124, Property Code, by amending Subsections (a), (c), and (d) and adding Subsection (f), as follows:

- (a) Provides an exception.
- (c) Provides that an affidavit of commencement of construction must contain an agreed commencement date, rather than the date the work actually commenced.
- (d) Provides that the time of inception of a mechanic's lien arising from work described in an affidavit of commencement filed under this section is the agreed commencement date of the work stated in the affidavit.
- (g) Requires the owner and the original contractor to file an affidavit of commencement under Subsection (c), if the owner obtains third-party financing for the construction of improvements under a residential construction contract.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2003.