

BILL ANALYSIS

Senate Research Center

H.B. 629
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Under current law, a subcontractor or supplier on a construction project who does not have a direct contract with the property owner may perfect a mechanic's lien to secure payment for labor or materials furnished to the project only to the extent that the claimant sends certain statutory notices and files a mechanic's lien affidavit in the real property records of the county of the project within strict time periods. Chapter 53, Property Code, requires an owner to retain 10 percent from payments made to an original contractor to serve as a fund for potential claimants. To perfect an enforceable lien on the statutory retainage, a subcontractor must file its mechanic's lien affidavit no later than thirty days after the "work has been completed." If an owner holds the retainage for the appropriate period and a claimant fails to file the mechanic's lien affidavit within the 30-day statutory period, the claimant will not be able to perfect or enforce a valid lien claim for the retainage.

H.B. 629 requires a property owner on a construction project to provide written notice to certain subcontractors when the contract between the owner and the original contractor is terminated. If the owner fails to provide the required notice, a subcontractor's claim on retainage will not be invalid solely because the lien affidavit was not filed within 30 days following the termination or abandonment of the original contract. The notice would only have to be given to those subcontractors who have requested such notice in writing from the owner or who have furnished statutory lien claim notices to the owner.

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 53.103, Property Code, to provide that a claimant has a lien on the retained funds if the claimant sends the notices required by this chapter in the time and manner required and files an affidavit claiming a lien not later than the 30th day after the earlier of certain dates.

SECTION 2. Amends Subchapter E, Chapter 53, Property Code, by adding Section 53.107, as follows:

Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER. (a) Requires the owner, not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, to give notice to each subcontractor who, before the date of termination or abandonment, has given notice to the owner as provided by Section 53.056 (Derivative Claimant: Notice to Owner or Original Contractor), 53.057 (Derivative Claimant: Notice for Contractual Retainage Claim), or 53.058 (Derivative Claimant: Notice for Specially Fabricated Items) or sent to the owner by certified or registered mail a written request for notice of termination or abandonment.

(b) Requires the notice to contain certain information.

(c) Provides that a notice sent on or before the 10th day after the date of termination or abandonment is prima facie evidence of the date the original contract was terminated or work was abandoned for purposes of this subchapter.

(d) Provides that a subcontractor who fails to file a lien affidavit in the time prescribed by Section 53.103(2) has a lien to the extent authorized under this subchapter if the subcontractor otherwise complies with this chapter and the owner did not provide the subcontractor notice as required by this section.

(e) Provides that this section does not apply to a residential construction project.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.