

AN ACT

relating to required lease terms for public property leased to a nongovernmental entity; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.909 to read as follows:

Sec. 2252.909. REQUIRED LEASE TERMS FOR LEASE OF PUBLIC PROPERTY. (a) In this section, "governmental entity" has the meaning assigned by Section 2253.001.

(b) A lease between a governmental entity and another person regarding public property must contain lease terms requiring the person to:

(1) include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor:

(A) execute a payment bond that conforms to Subchapter I, Chapter 53, Property Code; and

(B) execute a performance bond in an amount equal to the amount of the contract for the protection of the governmental entity and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and

(2) provide to the governmental entity a notice of commencement consistent with this section at least 90 days before

1 the date the construction, alteration, or repair of any improvement  
2 to the leased property begins.

3 (c) A notice of commencement under Subsection (b) must:

4 (1) identify the public property where the work will  
5 be performed;

6 (2) describe the work to be performed;

7 (3) state the total cost of the work to be performed;

8 (4) include copies of the performance and payment  
9 bonds required under Subsection (b); and

10 (5) include a written acknowledgment signed by the  
11 contractor stating that copies of the required performance and  
12 payment bonds will be provided to all subcontractors not later than  
13 the fifth day after the date a subcontract is executed.

14 (d) On or before the 10th day after the date a governmental  
15 entity receives a notice of commencement for the construction,  
16 alteration, or repair of an improvement to leased property required  
17 under Subsection (b)(2), the governmental entity may notify the  
18 leaseholder that the construction, alteration, or repair may not  
19 proceed.

20 (e) A person commits an offense if the person materially  
21 misrepresents information in a notice of commencement. An offense  
22 under this subsection is a Class A misdemeanor.

23 SECTION 2. Section [2253.027](#), Government Code, is amended by  
24 amending Subsection (a) and adding Subsection (c) to read as  
25 follows:

26 (a) If a governmental entity fails to obtain from a prime  
27 contractor a payment bond as required by Section [2253.021](#) or fails

1 to include in a lease the lease terms required by Section 2252.909:

2 (1) the entity is subject to the same liability that a  
3 surety would have if the surety had issued a payment bond and if the  
4 entity had obtained the bond; and

5 (2) a payment bond beneficiary is entitled to a lien on  
6 money due to the prime contractor in the same manner and to the same  
7 extent as if the public work contract were subject to Subchapter J,  
8 Chapter 53, Property Code.

9 (c) A governmental entity is not liable as a surety under  
10 Subsection (a)(1) if a person leasing property from the entity  
11 fails to submit to the entity the notice of commencement required by  
12 Section 2252.909.

13 SECTION 3. The changes in law made by this Act apply only to  
14 a lease for public property entered into or renewed by a  
15 governmental entity on or after the effective date of this Act.

16 SECTION 4. This Act takes effect September 1, 2023.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2518 was passed by the House on April 27, 2023, by the following vote: Yeas 147, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2518 was passed by the Senate on May 16, 2023, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor