

## **BILL ANALYSIS**

C.S.H.B. 2397  
By: Corte  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

All businesses depend on proper cash flow to pay for equipment, materials, and labor. When a purchaser is slow or unreliable in paying for goods and services, vendors and their subcontractors are placed into a restrictive cash flow situation. Subcontractors are in the worst position, as they may furnish as much as 80 percent of labor, materials, and equipment. The subcontractor is required to pay its workers and suppliers regardless of whether the payment has been received from the vendor. Paying employees and suppliers without receiving payment from the vendor can put a subcontractor's business in financial jeopardy.

For private projects, the Texas Property Code gives vendors and their subcontractors the right to suspend work if they are not getting paid for work properly performed. However, this is not the case for contracts with governmental entities. The purpose of C.S.H.B. 2397 is to provide vendors and their subcontractors with similar rights to suspend work for nonpayment when contracting with a state agency or political subdivision of the state.

### **RULEMAKING AUTHORITY**

It is the opinion of the committee that this bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2397 amends Chapter 2251, Government Code, by adding Subchapter D (Remedy for Nonpayment). This subchapter authorizes a vendor to suspend performance under a contract with a governmental entity if the entity does not pay the vendor an undisputed amount on a timely basis. The bill requires the vendor to give the entity written notice that it has not received payment and stating its intent to suspend performance for nonpayment.

C.S.H.B. 2397 prohibits, with certain exceptions, a vendor from suspending work before the 10th day after giving proper notice. It specifies that a vendor is not required to supply further labor, services, or materials until paid for work properly performed, plus costs for demobilization and remobilization. Moreover, the bill provides that the vendor is not responsible for damages resulting from suspending the work if the governmental entity has not notified the vendor in writing, before work is suspended, that payment has been made or that a good faith dispute for payment exists.

If a dispute exists, the bill requires that the governmental entity's written notice must specify the reasons for nonpayment. If the reason is noncompliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

C.S.H.B. 2397 includes procedures and remedies similar to those specified above to address nonpayment of subcontractors by vendors.

C.S.H.B. 2397 specifies that the rights and remedies provided by Subchapter D are in addition to other rights and remedies provided by Chapter 2251 or other law. The bill also provides that a person may not

waive any right or remedy granted by Chapter 2251.

C.S.H.B. 2397 includes specific provisions relating to contracts entered into by the Texas Department of Transportation for the construction of a highway. With respect to such contracts, a vendor or subcontractor may not suspend work before the 20th day after giving proper notice.

#### **EFFECTIVE DATE**

September 1, 2003. The Act applies only to a contract executed on or after September 1, 2003.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute corrects a drafting error in the original that may have resulted in a conflict between the provisions of Subchapter B of Chapter 2251, Government Code, and the provisions of Subchapter D of Chapter 2251, Government Code, as added by this bill.

The substitute includes special notice provisions before vendors and subcontractors may suspend performance under contracts entered into by the Texas Department of Transportation for the construction of a highway. The original bill did not include these provisions.

The substitute amends Section 2251.043, Government Code (Attorneys Fees) by adding provisions relating to arbitration and subcontractors.

The substitute makes a number of nonsubstantive changes by rearranging and renumbering the provisions of the original bill.

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C.S.H.B. 2397 prohibits, with certain exceptions, a vendor from suspending work before the 10th day after giving proper notice. It specifies that a vendor is not required to supply further labor, services, or materials until paid for work properly performed, plus costs for demobilization and remobilization. Moreover, the bill provides that the vendor is not responsible for damages resulting from suspending the work if the governmental entity has not notified the vendor in writing, before work is suspended, that payment has been made or that a good faith dispute for payment exists.

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