

By: Harris

S.B. No. 551

A BILL TO BE ENTITLED

AN ACT

relating to the priority of a construction lender's lien over a mechanic's lien.

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

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

(a) Except as provided by Subsections (d) and [Subsection] (e), for purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.

(c) An owner and original contractor may jointly file an affidavit of commencement with the county clerk of the county in which the land is located not later than the 30th day after the date of actual commencement of construction of the improvements or delivery of materials to the land. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of each original contractor, known at the time to the owner, that is furnishing labor, service, or materials for the construction of the improvements;

(3) a description, legally sufficient for identification, of the property being improved;

(4) an agreed commencement date [~~the date the work~~

1 ~~actually commenced~~]; and

2 (5) a general description of the improvement.

3 (d) ~~[An affidavit filed in compliance with this section is~~
4 ~~prima facie evidence of the date of the commencement of the~~
5 ~~improvement described in the affidavit.]~~ The time of inception of a
6 mechanic's lien arising from work described in an affidavit of
7 commencement filed under this section is the agreed commencement
8 date ~~[of commencement]~~ of the work stated in the affidavit.

9 (f) If the owner obtains third-party financing for the
10 construction of improvements under a residential construction
11 contract, the owner and the original contractor must file an
12 affidavit of commencement under Subsection (c).

13 SECTION 2. The change in law made by this Act applies only
14 to the priority of liens for a construction project in which the
15 commencement of construction of improvements or the delivery of
16 materials to the land on which the improvements are to be located
17 begins on or after the effective date of this Act. If the
18 commencement of construction of improvements or the delivery of
19 materials to the land on which the improvements are to be located
20 begins before the effective date of this Act, the priority of liens
21 for that construction project is governed by the law in effect
22 immediately before that date, and that law is continued in effect
23 for that purpose.

24 SECTION 3. This Act takes effect September 1, 2003.