

1-1 By: Williams S.B. No. 1720  
1-2 (In the Senate - Filed March 14, 2003; March 20, 2003, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 May 13, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; May 13, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1720 By: Nelson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to a vendor's or subcontractor's remedy for nonpayment of  
1-11 certain contracts.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (a), Section 2251.002, Government  
1-14 Code, is amended to read as follows:

1-15 (a) Except as provided by Subchapter D, Subchapter B [This  
1-16 chapter] does not apply to a payment made by a governmental entity,  
1-17 vendor, or subcontractor if:

1-18 (1) there is a bona fide dispute between the political  
1-19 subdivision and a vendor, contractor, subcontractor, or supplier  
1-20 about the goods delivered or the service performed that causes the  
1-21 payment to be late;

1-22 (2) there is a bona fide dispute between a vendor and a  
1-23 subcontractor or between a subcontractor and its supplier about the  
1-24 goods delivered or the service performed that causes the payment to  
1-25 be late;

1-26 (3) the terms of a federal contract, grant,  
1-27 regulation, or statute prevent the governmental entity from making  
1-28 a timely payment with federal funds; or

1-29 (4) the invoice is not mailed to the person to whom it  
1-30 is addressed in strict accordance with any instruction on the  
1-31 purchase order relating to the payment.

1-32 SECTION 2. Subchapter A, Chapter 2251, Government Code, is  
1-33 amended by adding Section 2251.004 to read as follows:

1-34 Sec. 2251.004. WAIVER. A person may not waive any right or  
1-35 remedy granted by this chapter. A purported waiver of any right or  
1-36 remedy granted by this chapter is void.

1-37 SECTION 3. Chapter 2251, Government Code, is amended by  
1-38 adding Subchapter D to read as follows:

1-39 SUBCHAPTER D. REMEDY FOR NONPAYMENT

1-40 Sec. 2251.051. VENDOR REMEDY FOR NONPAYMENT OF CONTRACT.

1-41 (a) A vendor may suspend performance required under a contract  
1-42 with a governmental entity if:

1-43 (1) the governmental entity does not pay the vendor an  
1-44 undisputed amount within the time limits provided by Subchapter B;  
1-45 and

1-46 (2) the vendor gives the governmental entity written  
1-47 notice:

1-48 (A) informing the governmental entity that  
1-49 payment has not been received; and

1-50 (B) stating the intent of the vendor to suspend  
1-51 performance for nonpayment.

1-52 (b) The vendor may not suspend performance under this  
1-53 section before the later of:

1-54 (1) the 10th day after the date the vendor gives notice  
1-55 under Subsection (a); or

1-56 (2) the day specified by Section 2251.053(b), if  
1-57 applicable.

1-58 (c) A vendor who suspends performance under this section is  
1-59 not:

1-60 (1) required to supply further labor, services, or  
1-61 materials until the vendor is paid the amount provided for under  
1-62 this chapter, plus costs for demobilization and remobilization; or

1-63 (2) responsible for damages resulting from suspending

2-1 work if the governmental entity with which the vendor has the  
2-2 contract has not notified the vendor in writing before performance  
2-3 is suspended that payment has been made or that a bona fide dispute  
2-4 for payment exists.

2-5 (d) A notification under Subsection (c)(2) that a bona fide  
2-6 dispute for payment exists must include a list of the specific  
2-7 reasons for nonpayment. If a reason specified is that labor,  
2-8 services, or materials provided by the vendor or the vendor's  
2-9 subcontractor are not provided in compliance with the contract, the  
2-10 vendor is entitled to a reasonable opportunity to:

2-11 (1) cure the noncompliance of the listed items; or  
2-12 (2) offer a reasonable amount to compensate for listed  
2-13 items for which noncompliance cannot be promptly cured.

2-14 Sec. 2251.052. SUBCONTRACTOR REMEDY FOR VENDOR'S  
2-15 NONPAYMENT OF CONTRACT. (a) A subcontractor of a vendor under a  
2-16 contract with a governmental entity may suspend performance  
2-17 required under the contract with the vendor if:

2-18 (1) the governmental entity with whom the  
2-19 subcontractor's vendor has a contract does not pay the vendor an  
2-20 undisputed amount within the time limits provided by Subchapter B;  
2-21 or

2-22 (2) the governmental entity with whom the  
2-23 subcontractor's vendor has a contract has paid the vendor  
2-24 undisputed amounts and the vendor does not pay the subcontractor an  
2-25 undisputed amount within the time limits provided by Subchapter B.

2-26 (b) A subcontractor who suspends performance under  
2-27 Subsection (a) must give the vendor written notice, a copy of which  
2-28 the subcontractor may provide the governmental entity with whom the  
2-29 vendor has a contract:

2-30 (1) informing the vendor that payment has not been  
2-31 received; and

2-32 (2) stating the intent of the subcontractor to suspend  
2-33 performance for nonpayment.

2-34 (c) The subcontractor may not suspend performance under  
2-35 this section before the later of:

2-36 (1) the 10th day after the date the subcontractor  
2-37 gives notice under Subsection (b); or

2-38 (2) the date specified by Section 2251.053(b), if  
2-39 applicable.

2-40 (d) A subcontractor who suspends performance under this  
2-41 section is not:

2-42 (1) required to supply further labor, services, or  
2-43 materials until the subcontractor is paid the amount provided for  
2-44 under the contract, plus costs for demobilization and  
2-45 remobilization; or

2-46 (2) responsible for damages resulting from suspending  
2-47 work if the vendor has not notified the subcontractor in writing  
2-48 before performance is suspended that payment has been made or the  
2-49 governmental entity has notified the vendor that a bona fide  
2-50 dispute for payment exists.

2-51 (e) A notification under Subsection (d)(2) that a bona fide  
2-52 dispute for payment exists must include a list of the specific  
2-53 reasons for nonpayment. If a reason specified is that labor,  
2-54 services, or materials provided by the subcontractor are not  
2-55 provided in compliance with the contract, the subcontractor is  
2-56 entitled to a reasonable opportunity to:

2-57 (1) cure the noncompliance of the listed items; or

2-58 (2) offer a reasonable amount to compensate for listed  
2-59 items for which noncompliance cannot be promptly cured.

2-60 Sec. 2251.053. HIGHWAY-RELATED CONTRACTS. (a) This  
2-61 section applies only to a contract entered into by the Texas  
2-62 Department of Transportation for the construction or maintenance of  
2-63 a highway or a related facility.

2-64 (b) A vendor or subcontractor may not suspend performance  
2-65 under Section 2251.051 or 2251.052 before the 20th day after the  
2-66 date:

2-67 (1) the vendor gives written notice under Section  
2-68 2251.051(a); or

2-69 (2) the subcontractor gives written notice under

3-1 Section 2251.052(b).

3-2 (c) A notice required under this subchapter and relating to  
3-3 a contract described by Subsection (a) must be sent by certified  
3-4 mail to:

3-5 (1) the executive director of the Texas Department of  
3-6 Transportation;

3-7 (2) the director of construction of the Texas  
3-8 Department of Transportation; or

3-9 (3) the person designated in the contract as the  
3-10 person to whom notices must be sent.

3-11 Sec. 2251.054. NOTICES. (a) This section applies only to  
3-12 a notice or other written communication required by this  
3-13 subchapter.

3-14 (b) A notice or other written communication to a  
3-15 governmental entity must be delivered to:

3-16 (1) the person designated in the contract as the  
3-17 person to whom a notice or other written communication must be sent;  
3-18 or

3-19 (2) if the contract does not designate a person to whom  
3-20 a notice or other written communication must be sent, the executive  
3-21 director or chief administrative officer of the governmental  
3-22 entity.

3-23 (c) Any notice or other written communication may be  
3-24 personally delivered to a person described by Subsection (b) or the  
3-25 person's agent, regardless of any other manner of delivery  
3-26 prescribed by law.

3-27 (d) If a notice or other written communication is sent by  
3-28 certified mail, the notice is effective on the date the notice or  
3-29 other written communication is deposited in the United States mail.

3-30 (e) If a notice or other written communication is sent by  
3-31 electronic means, the notice or other written communication is  
3-32 effective on the date the person designated or entitled to receive  
3-33 the notice or other written communication receives the notice or  
3-34 other written communication.

3-35 (f) If a notice or other written communication is received  
3-36 by the person designated or entitled to receive the notice or other  
3-37 written communication, the method of delivery of the notice or  
3-38 other written communication is immaterial.

3-39 Sec. 2251.055. RIGHTS AND REMEDIES NOT EXCLUSIVE. The  
3-40 rights and remedies provided by this subchapter are in addition to  
3-41 rights and remedies provided by this chapter or other law.

3-42 SECTION 4. (a) This Act takes effect September 1, 2003.

3-43 (b) This Act applies only to a contract executed on or after  
3-44 September 1, 2003. A contract executed before September 1, 2003, is  
3-45 governed by the law as it existed on the date the contract is  
3-46 executed, and the former law is continued in effect for that  
3-47 purpose.

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