

BILL ANALYSIS

H.B. 629
By: Solomons
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law (Chapter 53, Property Code), 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% 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.

In the recent case of Page v. Structural Wood Components, 102 S.W.3d 720 (Tex. 2003), the Texas Supreme Court interpreted the "work completion" language to mean the earlier of when the work under the contract between the owner and the original contractor (i.e., the contractor having the direct contract with the owner) was actually completed or the original contractor's contract was terminated. This poses a problem for some potential claimants who are subcontractors and may not know exactly when the contract between the owner and the original contractor was terminated. Because of the short time frame for taking action, a subcontractor may lose its lien rights because it is unable to determine the termination date and files its lien affidavit beyond the 30 day deadline.

House Bill 629 would require 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. The required notice does not have to be provided by an owner on a project for construction or renovation of a single-family house, duplex, triplex, quadruplex, or a unit in a multi-unit structure that is owned in whole or in part by a person who uses or intends to use the structure, or a unit in the structure, as a dwelling for that person.

RULEMAKING AUTHORITY

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

ANALYSIS

House Bill 629 clarifies the time deadline for filing a mechanic's lien affidavit in order to perfect a lien claim on statutory retainage by amending Sec. 53.103, Property Code to require the affidavit to be filed no later than 30 days after the work is completed or the original contract has been terminated or abandoned. House Bill 629 also adds a new Sec. 53.107, Property Code, which requires an owner to provide written notice to certain subcontractors when an original contract has been terminated or abandoned. The owner must provide the written notice within

ten days after the original contract is terminated or abandoned by the original contractor. The notice must only be provided to those subcontractors who have provided to the owner a written request for such notice or who have complied with the requirements for sending notices of claim to the owner under Sections 53.056, 53.057, or 53.058, Property Code. If the owner fails to provide the required notice and a subcontractor fails to file the mechanic's lien affidavit within 30 days after the original contract is terminated or abandoned, but the subcontractor otherwise properly perfects a lien claim against retainage, the subcontractor will have a lien on the retainage. House Bill 629 provides that it does not apply to claims arising on residential construction projects as defined in Sec. 53.001, Property Code.

EFFECTIVE DATE

September 1, 2005.