

1-1 By: Solomons, et al. (Senate Sponsor - Brimer) H.B. No. 629
1-2 (In the Senate - Received from the House April 25, 2005;
1-3 May 6, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 16, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 16, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 629 By: Averitt

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

1-10 relating to notice required for a mechanic's, contractor's, or
1-11 materialman's lien in certain circumstances.

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

1-13 SECTION 1. Section 53.103, Property Code, is amended to
1-14 read as follows:

1-15 Sec. 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien
1-16 on the retained funds if the claimant:

1-17 (1) sends the notices required by this chapter in the
1-18 time and manner required; and

1-19 (2) files an affidavit claiming a lien not later than
1-20 the 30th day after the earlier of the date:

1-21 (A) the work is completed;

1-22 (B) the original contract is terminated; or

1-23 (C) the original contractor abandons performance
1-24 under the original contract.

1-25 SECTION 2. Subchapter E, Chapter 53, Property Code, is
1-26 amended by adding Section 53.107 to read as follows:

1-27 Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR
1-28 ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER. (a)
1-29 Not later than the 10th day after the date an original contract is
1-30 terminated or the original contractor abandons performance under
1-31 the original contract, the owner shall give notice to each
1-32 subcontractor who, before the date of termination or abandonment,
1-33 has:

1-34 (1) given notice to the owner as provided by Section
1-35 53.056, 53.057, or 53.058; or

1-36 (2) sent to the owner by certified or registered mail a
1-37 written request for notice of termination or abandonment.

1-38 (b) The notice must contain:

1-39 (1) the name and address of the owner;

1-40 (2) the name and address of the original contractor;

1-41 (3) a description, legally sufficient for
1-42 identification, of the real property on which the improvements are
1-43 located;

1-44 (4) a general description of the improvements agreed
1-45 to be furnished under the original contract;

1-46 (5) a statement that the original contract has been
1-47 terminated or that performance under the contract has been
1-48 abandoned;

1-49 (6) the date of the termination or abandonment; and

1-50 (7) a conspicuous statement that a claimant may not
1-51 have a lien on the retained funds unless the claimant files an
1-52 affidavit claiming a lien not later than the 30th day after the date
1-53 of the termination or abandonment.

1-54 (c) A notice sent in compliance with this section on or
1-55 before the 10th day after the date of termination or abandonment is
1-56 prima facie evidence of the date the original contract was
1-57 terminated or work was abandoned for purposes of this subchapter.

1-58 (d) A subcontractor who fails to file a lien affidavit in
1-59 the time prescribed by Section 53.103(2) has a lien to the extent
1-60 authorized under this subchapter if:

1-61 (1) the subcontractor otherwise complies with this
1-62 chapter; and

1-63 (2) the owner did not provide the subcontractor notice

2-1 as required by this section.

2-2 (e) This section does not apply to a residential
2-3 construction project.

2-4 SECTION 3. This Act applies only to a subcontractor who
2-5 claims a lien as provided by Subchapter E, Chapter 53, Property
2-6 Code, as amended by this Act, if that claim arises under an original
2-7 contract entered into on or after the effective date of this Act. A
2-8 claim that arises under a contract entered into before the
2-9 effective date of this Act is governed by the law as it existed
2-10 immediately before the effective date of this Act, and that law is
2-11 continued in effect for that purpose.

2-12 SECTION 4. This Act takes effect September 1, 2005.

2-13 * * * * *