

By: Carona

S.B. No. 650

A BILL TO BE ENTITLED

AN ACT

relating to prompt payment of contractors and subcontractors under a contract to improve real property.

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

SECTION 1. Section 28.009, Property Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) If a contractor fails to apply to the owner for payment on or before the 15th day after the last day of a calendar month, or if an owner fails to provide notice of payment to the original contractor as provided by Section 53.005, a subcontractor may suspend the subcontractor's contractually required performance on the 10th day after the date the subcontractor gives the owner and the owner's lender written notice:

(1) informing the owner and lender that payment has not been received; and

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

SECTION 2. Section 53.001(2), Property Code, is amended to read as follows:

(2) "Improvement" includes:

(A) abutting sidewalks and streets and utilities in or on those sidewalks and streets;

(B) clearing, grubbing, draining, or fencing of land;

1 (C) wells, cisterns, tanks, reservoirs, or
2 artificial lakes or pools made for supplying or storing water;

3 (D) pumps, siphons, and windmills or other
4 machinery or apparatuses used for raising water for stock, domestic
5 use, or irrigation; ~~and~~

6 (E) planting orchard trees, grubbing out
7 orchards and replacing trees, and pruning of orchard trees; and

8 (F) demolishing, dismantling, and removing an
9 existing improvement to real property that is related to the
10 construction of an improvement to the real property.

11 SECTION 3. Subchapter A, Chapter 53, Property Code, is
12 amended by adding Sections 53.004 through 53.007 to read as
13 follows:

14 Sec. 53.004. NOTICE OF COMMENCEMENT. (a) Before beginning
15 to improve real property, the owner or the owner's agent shall
16 record a notice of commencement in the county clerk's office of each
17 county in which the property is located.

18 (b) The notice of commencement must contain:

19 (1) a description, legally sufficient for
20 identification, of the property to be improved, the street address
21 of the property, if available, or, if a street address is not
22 available, additional information that describes the physical
23 location of the real property to be improved;

24 (2) a general description of the improvements to be
25 constructed or installed;

26 (3) the name and address of the owner, a description of
27 the owner's interest in the site of the improvements, and the name

1 and address of the fee simple title holder, if different from the
2 owner;

3 (4) the name and address of the original contractor;

4 (5) the name and address of the surety on any payment
5 bond applicable to the construction project, and the amount of the
6 bond;

7 (6) the name and address of any person making a loan
8 for the construction or installment of the improvements; and

9 (7) the name and address in this state of any person
10 other than the owner whom the owner has designated to accept notices
11 or other documents for the owner.

12 Sec. 53.005. NOTICE OF PAYMENT BY OWNER. (a) Each time an
13 owner makes a payment to an original contractor or assesses a charge
14 or offset instead of a payment to an original contractor, the owner
15 shall send a notice of the payment or offset to each party entitled
16 to receive the notice under this section.

17 (b) The notice of payment or offset must include:

18 (1) the date of the payment, credit, or offset;

19 (2) the amount of the payment, credit, or offset;

20 (3) the means of transmitting the payment, credit, or
21 offset;

22 (4) the allocation of the payment, credit, or offset
23 by trade or scheduled value;

24 (5) the total amount paid or otherwise credited to the
25 original contractor for the project, including the current payment
26 or credit;

27 (6) the amount remaining to be paid to the original

1 contractor under the terms of the contract between the owner and the
2 original contractor; and

3 (7) the total value of the contract between the
4 original contractor and the owner for the project that is the
5 subject of the notice, including all changes and additions as of the
6 date of the notice.

7 (c) The notice of payment shall be sent to each
8 subcontractor and other person that has provided notice or
9 requested notices under Section 53.056, 53.057, 53.058, or 53.060.

10 Sec. 53.006. NOTICE OF COMPLETION. Not later than the 10th
11 day after the date of completion of an original contract, the owner
12 or the owner's authorized agent shall send a notice of completion to
13 each subcontractor and other person that has provided notice or
14 requested notices under Section 53.056, 53.057, 53.058, or 53.060.

15 Sec. 53.007. WAIVER PROHIBITED. The provisions of this
16 chapter may not be waived by contract.

17 SECTION 4. Section 53.057(e), Property Code, is amended to
18 read as follows:

19 (e) A claimant is not required to give any other notice as to
20 the retainage if the [If a] claimant gives notice:

21 (1) under this section and Section 53.055;

22 (2) under Sections 53.055 and 53.060; or

23 (3) [7] if the claim relates to a residential
24 construction project, under this section and Section 53.252 [7, the
25 claimant is not required to give any other notice as to the
26 retainage].

27 SECTION 5. Subchapter C, Chapter 53, Property Code, is

1 amended by adding Section 53.060 to read as follows:

2 Sec. 53.060. SUBCONTRACTOR REQUEST FOR NOTICE. (a) A
3 subcontractor may request that the owner provide the subcontractor
4 with any notices required under this chapter.

5 (b) A request under this section must contain:

6 (1) a description of the general nature of the labor,
7 materials, and services to be provided by the subcontractor;

8 (2) the full name and mailing address of the
9 subcontractor; and

10 (3) a statement that the subcontractor requests that
11 the owner send the subcontractor copies of all statutorily required
12 notices sent by the owner with respect to improvements under the
13 original contract.

14 (c) The request must be sent in the same manner as a notice
15 under Section 53.003 to the last known business address or
16 residence address of the owner or reputed owner, with a copy to the
17 original contractor.

18 SECTION 6. Section 53.084, Property Code, is amended by
19 amending Subsection (a) and adding Subsection (c) to read as
20 follows:

21 (a) Except for the amount required to be retained under
22 Subchapter E, if the owner has filed a full and accurate notice of
23 commencement as required by Section 53.004, the owner is not liable
24 for any amount paid to the original contractor before the owner is
25 authorized to withhold funds under this subchapter.

26 (c) Notwithstanding Subsection (a), an owner who fails to
27 send the notice of payment as required by Section 53.005 and has

1 received the notices required by Subchapter C or K is liable and the
2 owner's property is subject to a claim for any money paid to the
3 original contractor after the first date on which the owner failed
4 to send notice of payment under Section 53.005 if the lien has been
5 secured and if the claim has been reduced to final judgment. The
6 owner is liable for that amount in addition to any amount for which
7 the owner is liable under Subchapter E.

8 SECTION 7. The changes in law made by this Act apply only to
9 an original contract, as defined by Section 53.001, Property Code,
10 executed on or after the effective date of this Act. An original
11 contract executed before the effective date of this Act is subject
12 to the law in effect immediately before that date, and that law is
13 continued in effect for that purpose.

14 SECTION 8. This Act takes effect September 1, 2007.