

BILL ANALYSIS

Senate Research Center

H.B. 1456
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mechanic's, contractor's, and materialman's liens help contractors, subcontractors, and suppliers collect money due to them for labor or materials they provide for construction projects. Some interested parties are concerned that the guidance as to the information to be included in a lien waiver and release is inadequate, which may result in disagreement among the parties regarding the terms of the lien waiver or release and subsequent delays in payments, the filing of additional liens, and even litigation. H.B. 1456 seeks to address this situation by creating standardized lien waiver and release forms.

H.B. 1456 amends current law relating to the waiver and release of a mechanic's, contractor's, or materialman's lien or payment bond claim and to the creation of a mechanic's, contractor's, or materialman's lien for certain landscaping.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 53.021(d), Property Code, to provide that a person who provides labor, plant material, or other supplies for the installation of landscaping for a house, building, or improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation, under or by virtue of a written contract with the owner or the owner's agent, contractor, subcontractor, trustee, or receiver has a lien on the property.

SECTION 2. Amends Section 53.085(c), Property Code, as follows:

(c) Authorizes that the affidavit include:

(1) a waiver or release of lien rights or payment bond claims by the affiant that is conditioned on the receipt of actual payment or collection of funds when payment is made by check or draft, as provided by Subchapter L; and

(2)-(3) Makes no changes to these subdivisions;

SECTION 3. Amends Chapter 53, Property Code, by adding Subchapter L, as follows:

SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) Provides that any waiver and release of a lien or payment bond claim under this chapter is unenforceable unless a waiver and release is executed and delivered in accordance with this subchapter.

(b) Provides that a waiver and release is effective to release the owner, the owner's property, the contractor, and the surety on a payment bond from claims and liens only if:

- (1) the waiver and release substantially complies with one of the forms prescribed by Section 53.284;
- (2) the waiver and release is signed by the claimant or the claimant's authorized agent and notarized; and
- (3) in the case of a conditional release, evidence of payment to the claimant exists.

Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF LIEN OR PAYMENT BOND CLAIM. (a) Provides that a statement purporting to waive, release, or otherwise adversely affect a lien or payment bond claim is not enforceable and does not create an estoppel or impairment of lien or payment bond claim unless:

- (1) the statement is in writing and substantially complies with a form prescribed by Section 53.284;
- (2) the claimant has actually received payment in good and sufficient funds in full for the lien or payment bond claim; or
- (3) the statement is:
 - (A) in a written original contract or subcontract for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex; and
 - (B) made before labor or materials are provided under the original contract or subcontract.

(b) Provides that the filing of a lien rendered unenforceable by a lien waiver under Subsection (a)(3) does not violate Section 12.002 (Liability), Civil Practice and Remedies Code, unless:

- (1) an owner or original contractor sends a written explanation of the basis for nonpayment, evidence of the contractual waiver of lien rights, and a notice of request for release of the lien to the claimant at the claimant's address stated in the lien affidavit; and
- (2) the lien claimant does not release the filed lien affidavit on or before the 14th day after the date the owner or the original contractor sends the items required by Subdivision (1).

(c) Provides that Subsection (a)(3) does not apply to a person who supplies only material, and not labor, for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex.

Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT REQUIRED. Prohibits a person from requiring a claimant or potential claimant to execute an unconditional waiver and release for a progress payment or final payment amount unless the claimant or potential claimant received payment in that amount in good and sufficient funds.

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) Provides that a waiver and release given by a claimant or potential

claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

(b) Sets forth the required language of the waiver and release required, if a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release.

(c) Sets forth the required language and format of the waiver and release, if a claimant or potential claimant is required to execute an unconditional required waiver and release to prove the receipt of good and sufficient funds for a progress payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the progress payment.

(d) Sets forth the required language of the waiver and release required if a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a final payment and is not paid in good and sufficient funds in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release.

(e) Sets forth the required language and format of the waiver and release required if a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment.

Sec. 53.285. **ATTEMPTED COMPLIANCE.** (a) Requires that a waiver or release be construed to comply with this subchapter and is enforceable in the same manner as a waiver and release under this subchapter if the waiver or release:

- (1) is furnished in attempted compliance with this subchapter; or
- (2) evidences by its terms intent to comply with this subchapter.

(b) Requires that any provision in any waiver or release furnished in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this subchapter be disregarded and the provisions of this subchapter be read into that waiver or release.

(c) Provides that this section expires August 31, 2012.

Sec. 53.286. **PUBLIC POLICY.** Provides that notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien claim created under this chapter is void as against public policy.

Sec. 53.287. **CERTAIN AGREEMENTS EXEMPT.** Provides that this subchapter does not apply to a written agreement to subordinate, release, waive, or satisfy all or part of a lien or bond claim in:

- (1) an accord and satisfaction of an identified dispute;
- (2) an agreement concerning an action pending in any court or arbitration proceeding; or
- (3) an agreement that is executed after an affidavit claiming the lien has been filed or the bond claim has been made.

SECTION 4. Makes application of Section 53.021(d), Property Code, as amended by this Act, apply only to a lien claim arising under or by virtue of a contract entered into on or after the effective date of this Act, prospective.

SECTION 5. Makes application of Section 53.085(c), Property Code, as amended by this Act, and Subchapter L, Chapter 53, Property Code, as added by this Act, prospective to January 1, 2012.

SECTION 6. Effective date: January 1, 2012.