

By: Deshotel

H.B. No. 1390

A BILL TO BE ENTITLED

AN ACT

relating to retainage under certain construction contracts.

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

SECTION 1. Section 53.053(e), Property Code, is amended to read as follows:

(e) A claim for retainage accrues on the last day of the month in which all work called for by the contract between the owner and the original contractor has been completed, finally settled, terminated, or abandoned.

SECTION 2. Section 53.056(d), Property Code, is amended to read as follows:

(d) Except as provided by Section 53.057, to ~~to~~ authorize the owner to withhold funds under Subchapter D, the notice to the owner must state that if the claim remains unpaid, the owner may be personally liable and the owner's property may be subjected to a lien unless:

(1) the owner withholds payments from the contractor for payment of the claim; or

(2) the claim is otherwise paid or settled.

SECTION 3. Sections 53.057(a), (b), and (e), Property Code, are amended to read as follows:

(a) A claimant may give notice under this section instead of or in addition to notice under Section 53.056 or 53.252 if the claimant is to labor, furnish labor or materials, or specially

1 fabricate materials, or has labored, furnished labor or materials,
2 or specially fabricated materials, under an agreement with an
3 original contractor or a subcontractor providing for retainage.

4 (b) The claimant must give notice that the claimant may have
5 a lien claim for retainage to the owner or reputed owner [~~notice of~~
6 ~~the retainage agreement~~] not later than the 25th [~~15th~~] day after
7 the date:

8 (1) the work under the original contract is completed;

9 (2) the original contract is terminated; or

10 (3) the original contractor abandons performance
11 under the contract [~~of the second month following the delivery of~~
12 ~~materials or the performance of labor by the claimant that first~~
13 ~~occurs after the claimant has agreed to the contractual retainage.~~
14 ~~If the agreement is with a subcontractor, the claimant must also~~
15 ~~give notice within that time to the original contractor].~~

16 (e) If a claimant gives notice under this section [~~and~~
17 ~~Section 53.055 or, if the claim relates to a residential~~
18 ~~construction project, under this section and Section 53.252], the
19 claimant is not required to give any other notice as to the
20 retainage before the date the notice under Section 53.055 is
21 required.~~

22 SECTION 4. Section 53.081(c), Property Code, is amended to
23 read as follows:

24 (c) If notice is sent under Section 53.057, the owner may
25 withhold funds by retaining funds under Subchapter E for the period
26 required under Section 53.082 [~~immediately on receipt of a copy of~~
27 ~~the claimant's affidavit prepared in accordance with Sections~~

1 ~~53.052 through 53.055~~].

2 SECTION 5. Section 53.103, Property Code, is amended to
3 read as follows:

4 Sec. 53.103. LIEN ON RETAINED FUNDS. A claimant has a lien
5 on the retained funds if the claimant:

6 (1) sends the notices required by this chapter in the
7 time and manner required; and

8 (2) files an affidavit claiming a lien in the period
9 required under Section 53.052 [~~not later than the 30th day after the~~
10 ~~earlier of the date:~~

11 [~~(A) the work is completed,~~

12 [~~(B) the original contract is terminated, or~~

13 [~~(C) the original contractor abandons~~
14 ~~performance under the original contract]~~].

15 SECTION 6. Section 53.106, Property Code, is amended to
16 read as follows:

17 Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may
18 file with the county clerk of the county in which the property is
19 located an affidavit of completion. The affidavit must contain:

20 (1) the name and address of the owner;

21 (2) the name and address of the original contractor;

22 (3) a description, legally sufficient for
23 identification, of the real property on which the improvements are
24 located;

25 (4) a description of the improvements furnished under
26 the original contract;

27 (5) a statement that the improvements under the

1 original contract have been completed and the date of completion;
2 and

3 (6) a conspicuous statement that a claimant may not
4 have a lien on retained funds unless the claimant:

5 (A) complies with the notice requirement under
6 Section 53.057 not later than the 25th day after the date of
7 completion of the original contract; and

8 (B) files a lien affidavit not later than the
9 15th day after the fourth calendar month after the date of
10 completion of the original contract [~~files the affidavit claiming a~~
11 ~~lien not later than the 30th day after the date of completion~~].

12 (b) A copy of the affidavit must be sent by certified or
13 registered mail to the original contractor not later than the date
14 the affidavit is filed and to each claimant who sends a notice of
15 lien liability to the owner under Section 53.056, 53.057, 53.058,
16 53.252, or 53.253 not later than the date the affidavit is filed or
17 the fifth [~~10th~~] day after the date the owner receives the notice of
18 lien liability, whichever is later.

19 (c) A copy of the affidavit must also be sent to each person
20 who furnishes labor or materials for the property and who furnishes
21 the owner with a written request for the copy. The owner must
22 furnish the copy to the person not later than the date the affidavit
23 is filed or the fifth [~~10th~~] day after the date the request is
24 received, whichever is later.

25 (d) Except as provided by this subsection, an affidavit
26 filed under this section on or before the fifth [~~10th~~] day after the
27 date of completion of the improvements is prima facie evidence of

1 the date the work under the original contract is completed for
2 purposes of this subchapter and Section 53.057. If the affidavit is
3 filed after the fifth [~~10th~~] day after the date of completion, the
4 date of completion for purposes of this subchapter and Section
5 53.057 is the date the affidavit is filed. This subsection does not
6 apply to a person to whom the affidavit was not sent as required by
7 this section.

8 SECTION 7. Sections 53.107(a), (b), (c), and (d), Property
9 Code, are amended to read as follows:

10 (a) Not later than the fifth [~~10th~~] day after the date an
11 original contract is terminated or the original contractor abandons
12 performance under the original contract, the owner shall give
13 notice to each subcontractor who, before the date of termination or
14 abandonment, has:

15 (1) given notice to the owner as provided by Section
16 53.056, 53.057, or 53.058; or

17 (2) sent to the owner by certified or registered mail a
18 written request for notice of termination or abandonment.

19 (b) The notice must contain:

20 (1) the name and address of the owner;

21 (2) the name and address of the original contractor;

22 (3) a description, legally sufficient for
23 identification, of the real property on which the improvements are
24 located;

25 (4) a general description of the improvements agreed
26 to be furnished under the original contract;

27 (5) a statement that the original contract has been

1 terminated or that performance under the contract has been
2 abandoned;

3 (6) the date of the termination or abandonment; and

4 (7) a conspicuous statement that a claimant may not
5 have a lien on the retained funds unless the claimant:

6 (A) complies with the notice requirement in
7 Section 53.057 not later than the 25th day after the date the
8 original contract is terminated or abandoned; and

9 (B) files an affidavit claiming a lien not later
10 than the 15th ~~30th~~ day of the fourth month after the date of the
11 termination or abandonment.

12 (c) A notice sent in compliance with this section on or
13 before the fifth ~~[10th]~~ day after the date of termination or
14 abandonment is prima facie evidence of the date the original
15 contract was terminated or work was abandoned for purposes of this
16 subchapter.

17 (d) A subcontractor to whom an owner fails to send notice
18 under this section is not required to comply with Section 53.057 to
19 claim contractual retainage and may claim a lien by filing a lien
20 affidavit as prescribed by Section 53.052 ~~[who fails to file a lien~~
21 ~~affidavit in the time prescribed by Section 53.103(2) has a lien to~~
22 ~~the extent authorized under this subchapter if:~~

23 ~~[(1) the subcontractor otherwise complies with this~~
24 ~~chapter; and~~

25 ~~[(2) the owner did not provide the subcontractor~~
26 ~~notice as required by this section].~~

27 SECTION 8. Subchapter E, Chapter 53, Property Code, is

1 amended by adding Section 53.108 to read as follows:

2 Sec. 53.108. NOTICE OF COMPLETION TO SECURE RETAINAGE
3 CLAIM. (a) Not later than the fifth day after the date of
4 completion, an owner shall send by certified mail, return receipt
5 requested, or registered mail a notice of completion to:

6 (1) the original contractor;

7 (2) any person who provides a notice under Section
8 53.056, 53.057, 53.058, 53.252, or 53.253; and

9 (3) any person who furnished labor or provided
10 materials for the improvement and requests a copy of the notice of
11 completion.

12 (b) The notice must contain:

13 (1) the name and address of the owner;

14 (2) the name and address of the original contractor;

15 (3) a description, legally sufficient for
16 identification, of the real property on which the improvements are
17 located;

18 (4) a description of the improvements furnished under
19 the original contract;

20 (5) a statement that the improvements under the
21 original contract have been completed; and

22 (6) the date of completion.

23 (c) A notice sent in compliance with this section is prima
24 facie evidence under Sections 53.053(e) and 53.057 of the date the
25 work under the original contract was completed.

26 (d) An owner who sends a copy of an affidavit of completion
27 as prescribed by Section 53.106 satisfies the requirements of this

1 section.

2 (e) A subcontractor to whom an owner fails to send notice
3 under this section is not required to comply with Section 53.057 to
4 claim contractual retainage and may claim a lien by filing a lien
5 affidavit as prescribed by Section 53.052.

6 SECTION 9. Section 53.057(c), Property Code, is repealed.

7 SECTION 10. Chapter 53, Property Code, as amended by this
8 Act, applies only to an original contract entered into on or after
9 the effective date of this Act and any lien arising under that
10 contract. An original contract entered into before the effective
11 date of this Act, and any lien arising under that contract, is
12 governed by the law in effect immediately before the effective date
13 of this Act, and that law is continued in effect for that purpose.

14 SECTION 11. This Act takes effect September 1, 2011.