

By: Orr

H.B. No. 1456

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the waiver and release of a mechanic's, contractor's, or
3 materialman's lien or payment bond claim and to the creation of a
4 mechanic's, contractor's, or materialman's lien for certain
5 landscaping.

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

7 SECTION 1. Section 53.021(d), Property Code, is amended to
8 read as follows:

9 (d) A person who provides labor, plant material, or other
10 supplies for the installation of landscaping for a house, building,
11 or improvement, including the construction of a retention pond,
12 retaining wall, berm, irrigation system, fountain, or other similar
13 installation, under or by virtue of a written contract with the
14 owner or the owner's agent, contractor, subcontractor, trustee, or
15 receiver has a lien on the property.

16 SECTION 2. Section 53.085(c), Property Code, is amended to
17 read as follows:

18 (c) The affidavit may include:

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

23 (2) a warranty or representation that certain bills or
24 classes of bills will be paid by the affiant from funds paid in

1 reliance on the affidavit; and

2 (3) an indemnification by the affiant for any loss or
3 expense resulting from false or incorrect information in the
4 affidavit.

5 SECTION 3. Chapter 53, Property Code, is amended by adding
6 Subchapter L to read as follows:

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

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

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

15 (1) the waiver and release substantially complies with
16 one of the forms prescribed by Section 53.284;

17 (2) the waiver and release is signed by the claimant or
18 the claimant's authorized agent and notarized; and

19 (3) in the case of a conditional release, evidence of
20 payment to the claimant exists.

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

26 (1) the statement is in writing and substantially
27 complies with a form prescribed by Section 53.284;

1 (2) the claimant has actually received payment in good
2 and sufficient funds in full for the lien or payment bond claim; or

3 (3) the statement is:

4 (A) in a written original contract or subcontract
5 for the construction, remodel, or repair of a single-family house,
6 townhouse, or duplex or for land development related to a
7 single-family house, townhouse, or duplex; and

8 (B) made before labor or materials are provided
9 under the original contract or subcontract.

10 (b) The filing of a lien rendered unenforceable by a lien
11 waiver under Subsection (a)(3) does not violate Section 12.002,
12 Civil Practice and Remedies Code, unless:

13 (1) an owner or original contractor sends a written
14 explanation of the basis for nonpayment, evidence of the
15 contractual waiver of lien rights, and a notice of request for
16 release of the lien to the claimant at the claimant's address stated
17 in the lien affidavit; and

18 (2) the lien claimant does not release the filed lien
19 affidavit on or before the 14th day after the date the owner or the
20 original contractor sends the items required by Subdivision (1).

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

26 Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT
27 REQUIRED. A person may not require a claimant or potential claimant

1 to execute an unconditional waiver and release for a progress
2 payment or final payment amount unless the claimant or potential
3 claimant received payment in that amount in good and sufficient
4 funds.

5 Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT
6 BOND CLAIM. (a) A waiver and release given by a claimant or
7 potential claimant is unenforceable unless it substantially
8 complies with the applicable form described by Subsections (b)-(e).

9 (b) If a claimant or potential claimant is required to
10 execute a waiver and release in exchange for or to induce the
11 payment of a progress payment and is not paid in exchange for the
12 waiver and release or if a single payee check or joint payee check
13 is given in exchange for the waiver and release, the waiver and
14 release must read:

15 "CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

16 "Project _____

17 "Job No. _____

18 "On receipt by the signer of this document of a check from
19 _____ (maker of check) in the sum of \$_____ payable
20 to _____ (payee or payees of check) and when the
21 check has been properly endorsed and has been paid by the bank on
22 which it is drawn, this document becomes effective to release any
23 mechanic's lien right, any right arising from a payment bond that
24 complies with a state or federal statute, any common law payment
25 bond right, any claim for payment, and any rights under any similar
26 ordinance, rule, or statute related to claim or payment rights for
27 persons in the signer's position that the signer has on the

1 property of _____ (owner) located at
2 _____ (location) to the following extent:
3 _____ (job description).

4 "This release covers a progress payment for all labor,
5 services, equipment, or materials furnished to the property or to
6 _____ (person with whom signer contracted) as
7 indicated in the attached statement(s) or progress payment
8 request(s), except for unpaid retention, pending modifications and
9 changes, or other items furnished.

10 "Before any recipient of this document relies on this
11 document, the recipient should verify evidence of payment to the
12 signer.

13 "The signer warrants that the signer has already paid or will
14 use the funds received from this progress payment to promptly pay in
15 full all of the signer's laborers, subcontractors, materialmen, and
16 suppliers for all work, materials, equipment, or services provided
17 for or to the above referenced project in regard to the attached
18 statement(s) or progress payment request(s).

19 "Date _____
20 "_____ (Company name)
21 "By _____ (Signature)
22 "_____ (Title)"

23 (c) If a claimant or potential claimant is required to
24 execute an unconditional waiver and release to prove the receipt of
25 good and sufficient funds for a progress payment and the claimant or
26 potential claimant asserts in the waiver and release that the
27 claimant or potential claimant has been paid the progress payment,

1 the waiver and release must:

2 (1) contain a notice at the top of the document,
3 printed in bold type at least as large as the largest type used in
4 the document, but not smaller than 10-point type, that reads:

5 "NOTICE:

6 "This document waives rights unconditionally and states that
7 you have been paid for giving up those rights. It is prohibited for
8 a person to require you to sign this document if you have not been
9 paid the payment amount set forth below. If you have not been paid,
10 use a conditional release form."; and

11 (2) below the notice, read:

12 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

13 "Project _____

14 "Job No. _____

15 "The signer of this document has been paid and has received a
16 progress payment in the sum of \$_____ for all labor,
17 services, equipment, or materials furnished to the property or to
18 _____ (person with whom signer contracted) on the
19 property of _____ (owner) located at
20 _____ (location) to the following extent:

21 _____ (job description). The signer therefore
22 waives and releases any mechanic's lien right, any right arising
23 from a payment bond that complies with a state or federal statute,
24 any common law payment bond right, any claim for payment, and any
25 rights under any similar ordinance, rule, or statute related to
26 claim or payment rights for persons in the signer's position that
27 the signer has on the above referenced project to the following

1 extent:

2 "This release covers a progress payment for all labor,
3 services, equipment, or materials furnished to the property or to
4 _____ (person with whom signer contracted) as
5 indicated in the attached statement(s) or progress payment
6 request(s), except for unpaid retention, pending modifications and
7 changes, or other items furnished.

8 "The signer warrants that the signer has already paid or will
9 use the funds received from this progress payment to promptly pay in
10 full all of the signer's laborers, subcontractors, materialmen, and
11 suppliers for all work, materials, equipment, or services provided
12 for or to the above referenced project in regard to the attached
13 statement(s) or progress payment request(s).

14 "Date _____
15 "_____ (Company name)
16 "By _____ (Signature)
17 "_____ (Title)"

18 (d) If a claimant or potential claimant is required to
19 execute a waiver and release in exchange for or to induce the
20 payment of a final payment and is not paid in good and sufficient
21 funds in exchange for the waiver and release or if a single payee
22 check or joint payee check is given in exchange for the waiver and
23 release, the waiver and release must read:

24 "CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
25 "Project _____
26 "Job No. _____

27 "On receipt by the signer of this document of a check from

1 _____ (maker of check) in the sum of \$ _____
2 payable to _____ (payee or payees of check) and
3 when the check has been properly endorsed and has been paid by the
4 bank on which it is drawn, this document becomes effective to
5 release any mechanic's lien right, any right arising from a payment
6 bond that complies with a state or federal statute, any common law
7 payment bond right, any claim for payment, and any rights under any
8 similar ordinance, rule, or statute related to claim or payment
9 rights for persons in the signer's position that the signer has on
10 the property of _____ (owner) located at
11 _____ (location) to the following extent:
12 _____ (job description).

13 "This release covers the final payment to the signer for all
14 labor, services, equipment, or materials furnished to the property
15 or to _____ (person with whom signer contracted).

16 "Before any recipient of this document relies on this
17 document, the recipient should verify evidence of payment to the
18 signer.

19 "The signer warrants that the signer has already paid or will
20 use the funds received from this final payment to promptly pay in
21 full all of the signer's laborers, subcontractors, materialmen, and
22 suppliers for all work, materials, equipment, or services provided
23 for or to the above referenced project up to the date of this waiver
24 and release.

25 "Date _____

26 "_____ (Company name)

27 "By _____ (Signature)

1 "_____ (Title)"

2 (e) If a claimant or potential claimant is required to
3 execute an unconditional waiver and release to prove the receipt of
4 good and sufficient funds for a final payment and the claimant or
5 potential claimant asserts in the waiver and release that the
6 claimant or potential claimant has been paid the final payment, the
7 waiver and release must:

8 (1) contain a notice at the top of the document,
9 printed in bold type at least as large as the largest type used in
10 the document, but not smaller than 10-point type, that reads:

11 "NOTICE:

12 "This document waives rights unconditionally and states that
13 you have been paid for giving up those rights. It is prohibited for
14 a person to require you to sign this document if you have not been
15 paid the payment amount set forth below. If you have not been paid,
16 use a conditional release form."; and

17 (2) below the notice, read:

18 "UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

19 "Project _____

20 "Job No. _____

21 "The signer of this document has been paid in full for all
22 labor, services, equipment, or materials furnished to the property
23 or to _____ (person with whom signer contracted) on
24 the property of _____ (owner) located at
25 _____ (location) to the following extent:

26 _____ (job description). The signer therefore
27 waives and releases any mechanic's lien right, any right arising

1 from a payment bond that complies with a state or federal statute,
2 any common law payment bond right, any claim for payment, and any
3 rights under any similar ordinance, rule, or statute related to
4 claim or payment rights for persons in the signer's position.

5 "The signer warrants that the signer has already paid or will
6 use the funds received from this final payment to promptly pay in
7 full all of the signer's laborers, subcontractors, materialmen, and
8 suppliers for all work, materials, equipment, or services provided
9 for or to the above referenced project up to the date of this waiver
10 and release.

11 "Date _____

12 "_____ (Company name)

13 "By _____ (Signature)

14 "_____ (Title)"

15 Sec. 53.285. ATTEMPTED COMPLIANCE. (a) A waiver or release
16 shall be construed to comply with this subchapter and is
17 enforceable in the same manner as a waiver and release under this
18 subchapter if the waiver or release:

19 (1) is furnished in attempted compliance with this
20 subchapter; or

21 (2) evidences by its terms intent to comply with this
22 subchapter.

23 (b) Any provision in any waiver or release furnished in
24 attempted compliance with this subchapter that expands or restricts
25 the rights or liabilities provided under this subchapter shall be
26 disregarded and the provisions of this subchapter shall be read
27 into that waiver or release.

1 (c) This section expires August 31, 2012.

2 Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law
3 and except as provided by Section 53.282, any contract, agreement,
4 or understanding purporting to waive the right to file or enforce
5 any lien or claim created under this chapter is void as against
6 public policy.

7 Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter
8 does not apply to a written agreement to subordinate, release,
9 wave, or satisfy all or part of a lien or bond claim in:

10 (1) an accord and satisfaction of an identified
11 dispute;

12 (2) an agreement concerning an action pending in any
13 court or arbitration proceeding; or

14 (3) an agreement that is executed after an affidavit
15 claiming the lien has been filed or the bond claim has been made.

16 SECTION 4. Section 53.021(d), Property Code, as amended by
17 this Act, applies only to a lien claim arising under or by virtue of
18 a contract entered into on or after the effective date of this Act.
19 A lien claim arising under or by virtue of a contract entered into
20 before the effective date of this Act is governed by the law
21 applicable to the claim immediately before the effective date of
22 this Act, and that law is continued in effect for that purpose.

23 SECTION 5. Section 53.085(c), Property Code, as amended by
24 this Act, and Subchapter L, Chapter 53, Property Code, as added by
25 this Act, apply only to a contract executed on or after January 1,
26 2012. A contract executed before January 1, 2012, is covered by the
27 law applicable to the contract immediately before the effective

1 date of this Act, and the former law is continued in effect for that
2 purpose.

3 SECTION 6. This Act takes effect January 1, 2012.