

1-1 By: Orr (Senate Sponsor - Deuell) H.B. No. 1456  
1-2 (In the Senate - Received from the House May 6, 2011;  
1-3 May 9, 2011, read first time and referred to Committee on Business  
1-4 and Commerce; May 18, 2011, reported favorably by the following  
1-5 vote: Yeas 8, Nays 0; May 18, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the waiver and release of a mechanic's, contractor's, or  
1-9 materialman's lien or payment bond claim and to the creation of a  
1-10 mechanic's, contractor's, or materialman's lien for certain  
1-11 landscaping.

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

1-13 SECTION 1. Section 53.021(d), Property Code, is amended to  
1-14 read as follows:

1-15 (d) A person who provides labor, plant material, or other  
1-16 supplies for the installation of landscaping for a house, building,  
1-17 or improvement, including the construction of a retention pond,  
1-18 retaining wall, berm, irrigation system, fountain, or other similar  
1-19 installation, under or by virtue of a written contract with the  
1-20 owner or the owner's agent, contractor, subcontractor, trustee, or  
1-21 receiver has a lien on the property.

1-22 SECTION 2. Section 53.085(c), Property Code, is amended to  
1-23 read as follows:

1-24 (c) The affidavit may include:

1-25 (1) a waiver or release of lien rights or payment bond  
1-26 claims by the affiant that is conditioned on the receipt of actual  
1-27 payment or collection of funds when payment is made by check or  
1-28 draft, as provided by Subchapter L;

1-29 (2) a warranty or representation that certain bills or  
1-30 classes of bills will be paid by the affiant from funds paid in  
1-31 reliance on the affidavit; and

1-32 (3) an indemnification by the affiant for any loss or  
1-33 expense resulting from false or incorrect information in the  
1-34 affidavit.

1-35 SECTION 3. Chapter 53, Property Code, is amended by adding  
1-36 Subchapter L to read as follows:

1-37 SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

1-38 Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND  
1-39 CLAIM. (a) Any waiver and release of a lien or payment bond claim  
1-40 under this chapter is unenforceable unless a waiver and release is  
1-41 executed and delivered in accordance with this subchapter.

1-42 (b) A waiver and release is effective to release the owner,  
1-43 the owner's property, the contractor, and the surety on a payment  
1-44 bond from claims and liens only if:

1-45 (1) the waiver and release substantially complies with  
1-46 one of the forms prescribed by Section 53.284;

1-47 (2) the waiver and release is signed by the claimant or  
1-48 the claimant's authorized agent and notarized; and

1-49 (3) in the case of a conditional release, evidence of  
1-50 payment to the claimant exists.

1-51 Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT  
1-52 OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to  
1-53 waive, release, or otherwise adversely affect a lien or payment  
1-54 bond claim is not enforceable and does not create an estoppel or  
1-55 impairment of a lien or payment bond claim unless:

1-56 (1) the statement is in writing and substantially  
1-57 complies with a form prescribed by Section 53.284;

1-58 (2) the claimant has actually received payment in good  
1-59 and sufficient funds in full for the lien or payment bond claim; or

1-60 (3) the statement is:

1-61 (A) in a written original contract or subcontract  
1-62 for the construction, remodel, or repair of a single-family house,  
1-63 townhouse, or duplex or for land development related to a  
1-64 single-family house, townhouse, or duplex; and

2-1 (B) made before labor or materials are provided  
2-2 under the original contract or subcontract.

2-3 (b) The filing of a lien rendered unenforceable by a lien  
2-4 waiver under Subsection (a)(3) does not violate Section 12.002,  
2-5 Civil Practice and Remedies Code, unless:

2-6 (1) an owner or original contractor sends a written  
2-7 explanation of the basis for nonpayment, evidence of the  
2-8 contractual waiver of lien rights, and a notice of request for  
2-9 release of the lien to the claimant at the claimant's address stated  
2-10 in the lien affidavit; and

2-11 (2) the lien claimant does not release the filed lien  
2-12 affidavit on or before the 14th day after the date the owner or the  
2-13 original contractor sends the items required by Subdivision (1).

2-14 (c) Subsection (a)(3) does not apply to a person who  
2-15 supplies only material, and not labor, for the construction,  
2-16 remodel, or repair of a single-family house, townhouse, or duplex  
2-17 or for land development related to a single-family house,  
2-18 townhouse, or duplex.

2-19 Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT  
2-20 REQUIRED. A person may not require a claimant or potential claimant  
2-21 to execute an unconditional waiver and release for a progress  
2-22 payment or final payment amount unless the claimant or potential  
2-23 claimant received payment in that amount in good and sufficient  
2-24 funds.

2-25 Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT  
2-26 BOND CLAIM. (a) A waiver and release given by a claimant or  
2-27 potential claimant is unenforceable unless it substantially  
2-28 complies with the applicable form described by Subsections (b)-(e).

2-29 (b) If a claimant or potential claimant is required to  
2-30 execute a waiver and release in exchange for or to induce the  
2-31 payment of a progress payment and is not paid in exchange for the  
2-32 waiver and release or if a single payee check or joint payee check  
2-33 is given in exchange for the waiver and release, the waiver and  
2-34 release must read:

2-35 "CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

2-36 "Project \_\_\_\_\_

2-37 "Job No. \_\_\_\_\_

2-38 "On receipt by the signer of this document of a check from  
2-39 \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable  
2-40 to \_\_\_\_\_ (payee or payees of check) and when the  
2-41 check has been properly endorsed and has been paid by the bank on  
2-42 which it is drawn, this document becomes effective to release any  
2-43 mechanic's lien right, any right arising from a payment bond that  
2-44 complies with a state or federal statute, any common law payment  
2-45 bond right, any claim for payment, and any rights under any similar  
2-46 ordinance, rule, or statute related to claim or payment rights for  
2-47 persons in the signer's position that the signer has on the  
2-48 property of \_\_\_\_\_ (owner) located at  
2-49 \_\_\_\_\_ (location) to the following extent:  
2-50 \_\_\_\_\_ (job description).

2-51 "This release covers a progress payment for all labor,  
2-52 services, equipment, or materials furnished to the property or to  
2-53 \_\_\_\_\_ (person with whom signer contracted) as  
2-54 indicated in the attached statement(s) or progress payment  
2-55 request(s), except for unpaid retention, pending modifications and  
2-56 changes, or other items furnished.

2-57 "Before any recipient of this document relies on this  
2-58 document, the recipient should verify evidence of payment to the  
2-59 signer.

2-60 "The signer warrants that the signer has already paid or will  
2-61 use the funds received from this progress payment to promptly pay in  
2-62 full all of the signer's laborers, subcontractors, materialmen, and  
2-63 suppliers for all work, materials, equipment, or services provided  
2-64 for or to the above referenced project in regard to the attached  
2-65 statement(s) or progress payment request(s).

2-66 "Date \_\_\_\_\_

2-67 "\_\_\_\_\_ (Company name)

2-68 "By \_\_\_\_\_ (Signature)

2-69 "\_\_\_\_\_ (Title)"

3-1 (c) If a claimant or potential claimant is required to  
3-2 execute an unconditional waiver and release to prove the receipt of  
3-3 good and sufficient funds for a progress payment and the claimant or  
3-4 potential claimant asserts in the waiver and release that the  
3-5 claimant or potential claimant has been paid the progress payment,  
3-6 the waiver and release must:

3-7 (1) contain a notice at the top of the document,  
3-8 printed in bold type at least as large as the largest type used in  
3-9 the document, but not smaller than 10-point type, that reads:

3-10 "NOTICE:  
3-11 "This document waives rights unconditionally and states that  
3-12 you have been paid for giving up those rights. It is prohibited for  
3-13 a person to require you to sign this document if you have not been  
3-14 paid the payment amount set forth below. If you have not been paid,  
3-15 use a conditional release form."; and

3-16 (2) below the notice, read:

3-17 "UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

3-18 "Project \_\_\_\_\_

3-19 "Job No. \_\_\_\_\_

3-20 "The signer of this document has been paid and has received a  
3-21 progress payment in the sum of \$\_\_\_\_\_ for all labor,  
3-22 services, equipment, or materials furnished to the property or to  
3-23 \_\_\_\_\_ (person with whom signer contracted) on the  
3-24 property of \_\_\_\_\_ (owner) located at  
3-25 \_\_\_\_\_ (location) to the following extent:  
3-26 \_\_\_\_\_ (job description). The signer therefore  
3-27 waives and releases any mechanic's lien right, any right arising  
3-28 from a payment bond that complies with a state or federal statute,  
3-29 any common law payment bond right, any claim for payment, and any  
3-30 rights under any similar ordinance, rule, or statute related to  
3-31 claim or payment rights for persons in the signer's position that  
3-32 the signer has on the above referenced project to the following  
3-33 extent:

3-34 "This release covers a progress payment for all labor,  
3-35 services, equipment, or materials furnished to the property or to  
3-36 \_\_\_\_\_ (person with whom signer contracted) as  
3-37 indicated in the attached statement(s) or progress payment  
3-38 request(s), except for unpaid retention, pending modifications and  
3-39 changes, or other items furnished.

3-40 "The signer warrants that the signer has already paid or will  
3-41 use the funds received from this progress payment to promptly pay in  
3-42 full all of the signer's laborers, subcontractors, materialmen, and  
3-43 suppliers for all work, materials, equipment, or services provided  
3-44 for or to the above referenced project in regard to the attached  
3-45 statement(s) or progress payment request(s).

3-46 "Date \_\_\_\_\_

3-47 "\_\_\_\_\_ (Company name)

3-48 "By \_\_\_\_\_ (Signature)

3-49 "\_\_\_\_\_ (Title)"

3-50 (d) If a claimant or potential claimant is required to  
3-51 execute a waiver and release in exchange for or to induce the  
3-52 payment of a final payment and is not paid in good and sufficient  
3-53 funds in exchange for the waiver and release or if a single payee  
3-54 check or joint payee check is given in exchange for the waiver and  
3-55 release, the waiver and release must read:

3-56 "CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

3-57 "Project \_\_\_\_\_

3-58 "Job No. \_\_\_\_\_

3-59 "On receipt by the signer of this document of a check from  
3-60 \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_  
3-61 payable to \_\_\_\_\_ (payee or payees of check) and  
3-62 when the check has been properly endorsed and has been paid by the  
3-63 bank on which it is drawn, this document becomes effective to  
3-64 release any mechanic's lien right, any right arising from a payment  
3-65 bond that complies with a state or federal statute, any common law  
3-66 payment bond right, any claim for payment, and any rights under any  
3-67 similar ordinance, rule, or statute related to claim or payment  
3-68 rights for persons in the signer's position that the signer has on  
3-69 the property of \_\_\_\_\_ (owner) located at

4-1 \_\_\_\_\_ (location) to the following extent:  
4-2 \_\_\_\_\_ (job description).

4-3 "This release covers the final payment to the signer for all  
4-4 labor, services, equipment, or materials furnished to the property  
4-5 or to \_\_\_\_\_ (person with whom signer contracted).

4-6 "Before any recipient of this document relies on this  
4-7 document, the recipient should verify evidence of payment to the  
4-8 signer.

4-9 "The signer warrants that the signer has already paid or will  
4-10 use the funds received from this final payment to promptly pay in  
4-11 full all of the signer's laborers, subcontractors, materialmen, and  
4-12 suppliers for all work, materials, equipment, or services provided  
4-13 for or to the above referenced project up to the date of this waiver  
4-14 and release.

4-15 "Date \_\_\_\_\_  
4-16 \_\_\_\_\_ (Company name)

4-17 "By \_\_\_\_\_ (Signature)

4-18 " \_\_\_\_\_ (Title)"

4-19 (e) If a claimant or potential claimant is required to  
4-20 execute an unconditional waiver and release to prove the receipt of  
4-21 good and sufficient funds for a final payment and the claimant or  
4-22 potential claimant asserts in the waiver and release that the  
4-23 claimant or potential claimant has been paid the final payment, the  
4-24 waiver and release must:

4-25 (1) contain a notice at the top of the document,  
4-26 printed in bold type at least as large as the largest type used in  
4-27 the document, but not smaller than 10-point type, that reads:

4-28 "NOTICE:

4-29 "This document waives rights unconditionally and states that  
4-30 you have been paid for giving up those rights. It is prohibited for  
4-31 a person to require you to sign this document if you have not been  
4-32 paid the payment amount set forth below. If you have not been paid,  
4-33 use a conditional release form."; and

4-34 (2) below the notice, read:

4-35 "UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

4-36 "Project \_\_\_\_\_

4-37 "Job No. \_\_\_\_\_

4-38 "The signer of this document has been paid in full for all  
4-39 labor, services, equipment, or materials furnished to the property  
4-40 or to \_\_\_\_\_ (person with whom signer contracted) on  
4-41 the property of \_\_\_\_\_ (owner) located at  
4-42 \_\_\_\_\_ (location) to the following extent:  
4-43 \_\_\_\_\_ (job description). The signer therefore

4-44 waives and releases any mechanic's lien right, any right arising  
4-45 from a payment bond that complies with a state or federal statute,  
4-46 any common law payment bond right, any claim for payment, and any  
4-47 rights under any similar ordinance, rule, or statute related to  
4-48 claim or payment rights for persons in the signer's position.

4-49 "The signer warrants that the signer has already paid or will  
4-50 use the funds received from this final payment to promptly pay in  
4-51 full all of the signer's laborers, subcontractors, materialmen, and  
4-52 suppliers for all work, materials, equipment, or services provided  
4-53 for or to the above referenced project up to the date of this waiver  
4-54 and release.

4-55 "Date \_\_\_\_\_  
4-56 \_\_\_\_\_ (Company name)

4-57 "By \_\_\_\_\_ (Signature)

4-58 " \_\_\_\_\_ (Title)"

4-59 Sec. 53.285. ATTEMPTED COMPLIANCE. (a) A waiver or  
4-60 release shall be construed to comply with this subchapter and is  
4-61 enforceable in the same manner as a waiver and release under this  
4-62 subchapter if the waiver or release:

4-63 (1) is furnished in attempted compliance with this  
4-64 subchapter; or

4-65 (2) evidences by its terms intent to comply with this  
4-66 subchapter.

4-67 (b) Any provision in any waiver or release furnished in  
4-68 attempted compliance with this subchapter that expands or restricts  
4-69 the rights or liabilities provided under this subchapter shall be

5-1 disregarded and the provisions of this subchapter shall be read  
5-2 into that waiver or release.

5-3 (c) This section expires August 31, 2012.

5-4 Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law  
5-5 and except as provided by Section 53.282, any contract, agreement,  
5-6 or understanding purporting to waive the right to file or enforce  
5-7 any lien or claim created under this chapter is void as against  
5-8 public policy.

5-9 Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter  
5-10 does not apply to a written agreement to subordinate, release,  
5-11 waive, or satisfy all or part of a lien or bond claim in:

5-12 (1) an accord and satisfaction of an identified  
5-13 dispute;

5-14 (2) an agreement concerning an action pending in any  
5-15 court or arbitration proceeding; or

5-16 (3) an agreement that is executed after an affidavit  
5-17 claiming the lien has been filed or the bond claim has been made.

5-18 SECTION 4. Section 53.021(d), Property Code, as amended by  
5-19 this Act, applies only to a lien claim arising under or by virtue of  
5-20 a contract entered into on or after the effective date of this Act.  
5-21 A lien claim arising under or by virtue of a contract entered into  
5-22 before the effective date of this Act is governed by the law  
5-23 applicable to the claim immediately before the effective date of  
5-24 this Act, and that law is continued in effect for that purpose.

5-25 SECTION 5. Section 53.085(c), Property Code, as amended by  
5-26 this Act, and Subchapter L, Chapter 53, Property Code, as added by  
5-27 this Act, apply only to a contract executed on or after January 1,  
5-28 2012. A contract executed before January 1, 2012, is covered by the  
5-29 law applicable to the contract immediately before the effective  
5-30 date of this Act, and the former law is continued in effect for that  
5-31 purpose.

5-32 SECTION 6. This Act takes effect January 1, 2012.

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