

By: Deuell

S.B. No. 1173

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to lender notice of default to contractors regarding a  
3 construction loan or financing agreement for an improvement to real  
4 property and related procedures for suspending contractors'  
5 performance.

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

7 SECTION 1. Chapter 28, Property Code, is amended by adding  
8 Section 28.0091 to read as follows:

9 Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS;  
10 SUSPENSION OF PERFORMANCE PENDING CURE. (a) This section applies  
11 only to a lender that provides financing through a construction  
12 loan or under a financing agreement for an improvement to the  
13 borrower's real property for which the real property or improvement  
14 is collateral.

15 (b) On the earliest date a lender takes an action for which  
16 notice is required by this subsection in response to a particular  
17 default by the borrower, the lender must give written notice of the  
18 action to each contractor and subcontractor known to the lender to  
19 be providing labor, materials, equipment, or services for the  
20 improvement. Notice under this subsection is required if the  
21 lender:

22 (1) exercises a default remedy provided by statute or  
23 the loan or financing agreement;

24 (2) gives a notice of default to the borrower; or

1           (3) fails to fund, in whole or in substantial part, a  
2 draw request submitted in proper form by a contractor.

3           (c) Not later than the third day after the date a contractor  
4 receives a notice from a lender under Subsection (b), the  
5 contractor shall give written notice to each of the contractor's  
6 subcontractors of the action taken by the lender.

7           (d) After the sixth day after the earliest date on which the  
8 lender takes an action for which notice is required by Subsection  
9 (b), a contractor or subcontractor may suspend contractually  
10 required performance without penalty on sending to the lender  
11 written notice of the contractor's or subcontractor's intent to  
12 suspend performance and, if the notice is given by a subcontractor,  
13 to the subcontractor's contractor. The contractor or subcontractor  
14 may suspend performance under this subsection until:

15           (1) the contractor and subcontractor receive a notice  
16 of cure from the lender under Subsection (e); or

17           (2) the lender or the borrower provides the contractor  
18 and subcontractor a written payment guarantee acceptable to the  
19 contractor and subcontractor for all labor, materials, equipment,  
20 or services provided or to be provided for the improvement to real  
21 property after the action is taken.

22           (e) If the default in response to which the action for which  
23 notice is required by Subsection (b) is taken is cured, the lender  
24 shall give written notice of the cure to each contractor and  
25 subcontractor known to the lender.

26           (f) Not later than the third day after the date a contractor  
27 receives a notice of cure under Subsection (e), the contractor

1 shall give written notice of the cure to each of the contractor's  
2 subcontractors.

3 (g) If a lender does not give a contractor or subcontractor  
4 notice as required by Subsection (b), the lender's security  
5 interest in the project is subordinate to the value of all labor,  
6 materials, equipment, or services provided by that contractor or  
7 subcontractor after the date on which the notice should have been  
8 given.

9 SECTION 2. The change in law made by this Act applies only  
10 to a construction loan or financing agreement entered into on or  
11 after the effective date of this Act. A construction loan or  
12 financing agreement entered into before the effective date of this  
13 Act is governed by the law in effect immediately before the  
14 effective date of this Act, and that law is continued in effect for  
15 that purpose.

16 SECTION 3. This Act takes effect September 1, 2011.