

By: Bell

H.B. No. 2180

A BILL TO BE ENTITLED

AN ACT

1
2 relating to lender notice to contractors regarding a construction
3 loan or financing agreement for the improvement of real property
4 and related procedures for suspending contractors' and
5 subcontractors' 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 real
13 property for which the real property or improvement is collateral.

14 (b) For an improvement to real property for which financing
15 is provided as described by Subsection (a), the contractor shall
16 provide to the lender:

17 (1) the contractor's name, physical and mailing
18 addresses and e-mail address, if available, and telephone number;
19 and

20 (2) the name of the person to whom any notice under
21 this section should be delivered.

22 (c) Except as provided by Subsection (f), each contractor
23 and subcontractor providing labor, materials, equipment, or
24 services for an improvement described by this section is entitled

1 to suspend contractually required performance without penalty or
2 liability for damages if the lender suspends a disbursement of loan
3 proceeds or ceases disbursements of loan proceeds to a borrower or
4 property owner under the loan or financing agreement to which this
5 section applies.

6 (d) Except as provided by Subsection (f), a lender shall
7 immediately notify the contractor identified under Subsection (b)
8 of a suspension of a disbursement of loan proceeds or cessation of
9 disbursements of loan proceeds described by Subsection (c).

10 (e) On receipt of notice under Subsection (d), a contractor
11 shall immediately notify each of the contractor's subcontractors of
12 the suspension of the disbursement of loan proceeds or cessation of
13 disbursements of loan proceeds and of the subcontractor's right
14 under this section to suspend contractually required performance
15 without penalty or liability for damages as a result of the
16 suspension of the disbursement of loan proceeds or cessation of
17 disbursements of loan proceeds.

18 (f) A lender is not required to give notice to a contractor
19 under Subsection (d) with respect to a suspension of a disbursement
20 of loan proceeds or cessation of disbursements of loan proceeds
21 described by Subsection (c) if, before the lender suspends the
22 disbursement of loan proceeds or ceases the disbursements of loan
23 proceeds, a written agreement exists between the lender and the
24 contractor that:

25 (1) provides for the continued performance by the
26 contractor and for payment to the contractor in the event of a
27 default by the borrower or property owner under the loan or

1 financing agreement;

2 (2) provides for notice from the lender to the
3 contractor that the borrower or property owner is in default under
4 the loan or financing agreement;

5 (3) requires that, on the receipt of notice under
6 Subdivision (2), the contractor shall immediately notify the
7 contractor's subcontractors of the borrower's or property owner's
8 default under the loan or financing agreement; and

9 (4) specifically states that subcontractors of the
10 contractor are third-party beneficiaries of the lender's
11 obligations under the agreement.

12 (g) A subcontractor is a third-party beneficiary of a
13 lender's obligations under Subsection (d) with equal standing to a
14 contractor to enforce remedies.

15 SECTION 2. The change in law made by this Act applies only
16 to a construction loan or financing agreement entered into on or
17 after the effective date of this Act. A construction loan or
18 financing agreement entered into before the effective date of this
19 Act is governed by the law in effect immediately before the
20 effective date of this Act, and that law is continued in effect for
21 that purpose.

22 SECTION 3. This Act takes effect September 1, 2013.