

By: Oliveira

H.B. No. 3553

A BILL TO BE ENTITLED

AN ACT

relating to mechanic's, contractor's, or materialman's liens.

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

SECTION 1. Subchapter A, Chapter 53, Property Code, is amended by adding Section 53.0001 to read as follows:

Sec. 53.0001. LEGISLATIVE INTENT; LIBERAL CONSTRUCTION.

(a) It is the intent of the legislature to provide assurance of payment to laborers, contractors, subcontractors, and certain service providers who make improvements to real property.

(b) This chapter shall be liberally construed in favor of a claimant for payment under a contract for labor or material for an improvement to real property.

SECTION 2. Subdivision (15), Section 53.001, Property Code, is amended to read as follows:

(15) "Completion" [~~of an original contract~~] means the later of:

(A) the 30th day after the date of the final inspection and written final acceptance by the governmental body that issued the building permit for the house, building, or improvement; or

(B) the date of actual completion of the work, including any extras or change orders reasonably required or contemplated under the original contract, other than warranty work [~~or replacement or repair of the work~~] performed under the

1 contract.

2 SECTION 3. Subsections (a), (c), (d), and (e), Section  
3 53.021, Property Code, are amended to read as follows:

4 (a) A person has a lien if:

5 (1) the person [~~labors, specially fabricates~~  
6 ~~material, or~~] furnishes labor or materials:

7 (A) for construction or repair [~~in this state~~]  
8 of[+]

9 [(A)] a house, building, [~~or~~] improvement,  
10 fixture,[+]

11 [(B) ~~a levee or embankment to be erected for the~~  
12 ~~reclamation of overflow land along a river or creek,~~] or

13 [(C) ~~a~~] railroad; or

14 (B) that enhance the value, use, productivity,  
15 enjoyment, or aesthetics of real property; and

16 (2) the person [~~labors, specially fabricates the~~  
17 ~~material, or~~] furnishes the labor or materials under or by virtue of  
18 a contract with the owner or the owner's agent, [~~trustee,~~  
19 ~~receiver,~~] contractor, or subcontractor.

20 (c) An architect, engineer, or surveyor who prepares a plan  
21 or plat under or by virtue of a written contract with the owner or  
22 the owner's agent[~~, trustee, or receiver~~] in connection with the  
23 actual or proposed design, construction, or repair of improvements  
24 on real property or the location of the boundaries of real property  
25 has a lien on the property.

26 (d) A person who provides labor, plant material, or other  
27 supplies for the installation of landscaping for a house, building,

1 or improvement, including the construction of a retention pond,  
2 retaining wall, berm, irrigation system, fountain, or other similar  
3 installation, under or by virtue of a written contract with the  
4 owner or the owner's agent, contractor, or subcontractor [~~, trustee,~~  
5 ~~or receiver~~] has a lien on the property.

6 (e) A person who performs labor as part of, or who furnishes  
7 labor or materials for, the demolition of a structure on real  
8 property under or by virtue of a written contract with the owner of  
9 the property or the owner's agent, [~~trustee, receiver,~~] contractor,  
10 or subcontractor has a lien on the property.

11 SECTION 4. Subchapter B, Chapter 53, Property Code, is  
12 amended by adding Section 53.0211 to read as follows:

13 Sec. 53.0211. OWNER'S REPRESENTATIVE; NOTICES. (a) An  
14 owner of real property who enters into an original contract  
15 creating a lien under this chapter may designate a person in this  
16 state as the owner's representative to whom a notice or other  
17 documents may be sent under this chapter.

18 (b) Any notices required by this chapter to be sent to the  
19 owner may be sent to the owner or to the owner's representative.

20 SECTION 5. Section 53.022, Property Code, is amended to  
21 read as follows:

22 Sec. 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien  
23 extends to the real property on which the labor was performed or  
24 materials furnished and to any house, building, fixtures, or  
25 improvements on the property [~~, the land reclaimed from overflow, or~~  
26 ~~the railroad and all of its properties, and to each lot of land~~  
27 ~~necessarily connected or reclaimed~~].

1           (b) If the real property is located ~~[The lien does not~~  
2 ~~extend to abutting sidewalks, streets, and utilities that are~~  
3 ~~public property.~~

4           ~~[(c) A lien against land]~~ in a city, town, or village, the  
5 lien extends to each lot on which the house, building, fixture, or  
6 improvement is located.

7           (c) If the real property is ~~[situated or on which the labor~~  
8 ~~was performed.~~

9           ~~[(d) A lien against land]~~ not in a city, town, or village,  
10 the lien extends to not more than 50 acres of the real property on  
11 which the house, building, fixture, or improvement is located  
12 ~~[situated]~~ or ~~[on which]~~ the labor and materials were furnished  
13 ~~[was performed]~~.

14           SECTION 6. Subsection (a), Section 53.026, Property Code,  
15 is amended to read as follows:

16           (a) A person who labors~~[, specially fabricates materials,]~~  
17 or furnishes labor or materials under a direct contractual  
18 relationship with another person is considered to be in direct  
19 contractual relationship with the owner and has a lien as an  
20 original contractor, if:

21           (1) ~~[the owner contracted with the other person for~~  
22 ~~the construction or repair of a house, building, or improvements~~  
23 ~~and the owner can effectively control that person]~~ through  
24 ownership of voting stock, interlocking directorships, or  
25 otherwise, ~~[+~~

26           ~~[(2)]~~ the owner ~~[contracted with the other person for~~  
27 ~~the construction or repair of a house, building, or improvements~~

1 ~~and that other person]~~ can effectively control that other person or  
2 that other person can effectively control the owner [~~through~~  
3 ~~ownership of voting stock, interlocking directorships, or~~  
4 ~~otherwise]~~; or

5 (2) the contract between [~~(3)]~~ the owner and that  
6 [~~contracted with the]~~ other person [~~for the construction or repair~~  
7 ~~of a house, building, or improvements and the contract]~~ was made  
8 without good faith intention of the parties that the other person  
9 was to perform the contract.

10 SECTION 7. Chapter 53, Property Code, is amended by adding  
11 Subchapter B-1 to read as follows:

12 SUBCHAPTER B-1. NOTICE OF COMMENCEMENT

13 Sec. 53.031. NOTICE OF COMMENCEMENT. (a) If an owner  
14 enters into an original contract that creates a lien under Section  
15 53.021(a) on the owner's property, the owner shall, before the  
16 contractor furnishes any labor or materials to the property:

17 (1) file a notice of commencement that complies with  
18 this subchapter with the county clerk of each county in which the  
19 property is located;

20 (2) post the notice of commencement in a conspicuous  
21 place on the property; and

22 (3) furnish the notice of commencement to the original  
23 contractor.

24 (b) The owner shall ensure that the notice of commencement  
25 remains posted on the property until completion of the work.

26 Sec. 53.032. PAYMENT BOND. A copy of the payment bond, if  
27 any, must be filed with the notice of commencement filed with the

1 county clerk and attached to the back of the notice of commencement  
2 at the time the notice is posted on the property.

3 Sec. 53.033. CONTENTS OF NOTICE. The notice of  
4 commencement must be in the form of an affidavit sworn to by the  
5 owner and must contain:

6 (1) a description of the property, legally sufficient  
7 for identification, and the street address of the property, if the  
8 street address is available;

9 (2) a general description of the work to be performed  
10 on the property;

11 (3) the name and address of all persons who own all or  
12 part of the property, and a description of the type of interest of  
13 each owner of the property;

14 (4) the name and address of each person who owns all or  
15 part of the fee simple title to the property, if different than the  
16 owner;

17 (5) the name and address of the original contractor;

18 (6) the name and address of the surety on a payment  
19 bond applicable to the construction or repair, if any, and the  
20 amount of the bond;

21 (7) the name and address of any person making a loan  
22 for the work; and

23 (8) the name and address of the owner's  
24 representative, if any.

25 Sec. 53.034. SUBCONTRACTOR REQUEST FOR NOTICE. (a) A  
26 subcontractor may make a written request for a copy of the notice of  
27 commencement from the owner or reputed owner.

1       (b) The owner shall provide a copy of the notice of  
2 commencement to the subcontractor not later than the 10th day after  
3 receipt of the subcontractor's request.

4       (c) If the owner fails to give the notice to the  
5 subcontractor as required by Subsection (b), the subcontractor may  
6 delay sending the notice required under Section 53.056(c) until not  
7 later than the 20th day after the date the notice of commencement is  
8 provided to the subcontractor.

9       Sec. 53.035. LIEN NOTICE BY SUBCONTRACTOR NOT REQUIRED. A  
10 subcontractor is not required to send the notice required by  
11 Section 53.056(c) if, at the time the subcontractor furnishes the  
12 first labor or material to an owner's property, the owner has not  
13 complied with Sections 53.031 and 53.032.

14       Sec. 53.036. AMENDED NOTICE OF COMMENCEMENT. (a) The  
15 owner shall file with the county clerk of each county in which the  
16 owner's property is located and post on the owner's property an  
17 amended notice of commencement if any information contained in an  
18 existing notice of commencement changes or is determined to be  
19 incorrect.

20       (b) The owner shall provide a copy of the amended notice to  
21 each subcontractor who sent a notice to the owner under Section  
22 53.056(c) or made a request for a notice under Section 53.034.

23       (c) If the owner fails to provide the copy of the amended  
24 notice to the subcontractor, any new or changed information in the  
25 amended notice of commencement may not be used as a basis to  
26 invalidate a notice provided or a lien claim filed by the  
27 subcontractor under this chapter.

1       Sec. 53.037. RELIANCE ON NOTICE.       (a) An original  
2 contractor or subcontractor required to send or file a notice or  
3 file a lien claim under this chapter may rely on the validity of the  
4 information contained in a notice of commencement and any amended  
5 notice of commencement.

6       (b) A deficiency or error in a notice provided or a lien  
7 claim filed under this chapter may not be used to invalidate the  
8 notice or lien claim if the deficiency or error resulted from  
9 reliance on incorrect information provided in the notice of  
10 commencement or applicable amended notice of commencement.

11       Sec. 53.038. LIABILITY OF OWNER FOR INCORRECT INFORMATION.  
12 If the notice of commencement or amended notice of commencement  
13 contains incorrect information, the owner and an individual signing  
14 the notice on behalf of the owner, if any, are liable to a lien  
15 claimant for all damages, including damages for any loss of lien or  
16 bond rights, attorney's fees, expenses, and costs suffered as a  
17 result of the lien claimant's reliance on the incorrect  
18 information.

19       SECTION 8. Section 53.052, Property Code, is amended to  
20 read as follows:

21       Sec. 53.052. FILING OF LIEN CLAIM [~~AFFIDAVIT~~]. (a) Except  
22 as provided by Subsection (b), the person claiming the lien must  
23 file a lien claim [~~an affidavit~~] with the county clerk of the county  
24 in which the property is located [~~or into which the railroad~~  
25 ~~extends~~] not later than the 140th [~~15th~~] day [~~of the fourth calendar~~  
26 ~~month~~] after the date of completion, termination, or abandonment of  
27 the original contract [~~day on which the indebtedness accrues~~].



1 (b) A person claiming a lien arising from a residential  
2 construction project must file a lien claim [~~an affidavit~~] with the  
3 county clerk of the county in which the property is located not  
4 later than the 110th [~~15th~~] day [~~of the third calendar month~~] after  
5 the date of completion, termination, or abandonment of the original  
6 contract [~~day on which the indebtedness accrues~~].

7 (c) Not later than the 10th day after the date a  
8 subcontractor files a lien claim, the subcontractor must send a  
9 copy of the lien claim to the owner or reputed owner and the  
10 original contractor to the owner's and contractor's last known  
11 addresses. Unless the owner was prejudiced by receiving late  
12 notice of a lien claim under this subsection, the receipt of a late  
13 notice of the lien claim [~~The county clerk shall record the~~  
14 ~~affidavit in records kept for that purpose and shall index and~~  
15 ~~cross-index the affidavit in the names of the claimant, the~~  
16 ~~original contractor, and the owner. Failure of the county clerk to~~  
17 ~~properly record or index a filed affidavit]~~ does not invalidate the  
18 lien.

19 SECTION 9. Section 53.054, Property Code, is amended to  
20 read as follows:

21 Sec. 53.054. CONTENTS OF LIEN CLAIM [~~AFFIDAVIT~~]. (a) The  
22 lien claim [~~affidavit must be signed by the person claiming the lien~~  
23 ~~or by another person on the claimant's behalf and]~~ must contain  
24 [~~substantially~~]:

- 25 (1) a sworn statement of the amount of the claim;  
26 (2) the name and last known address of the owner or  
27 reputed owner;

1           (3) a general statement of the kind of work done and  
2 materials furnished by the claimant [~~and, for a claimant other than~~  
3 ~~an original contractor, a statement of each month in which the work~~  
4 ~~was done and materials furnished for which payment is requested];~~

5           (4) the name and last known address of the person by  
6 whom the claimant was employed or to whom the claimant furnished the  
7 materials or labor;

8           (5) the name and last known address of the original  
9 contractor;

10          (6) a description, legally sufficient for  
11 identification, of the property sought to be charged with the lien;  
12 and

13          (7) the claimant's name, mailing address, and, if  
14 different, physical address[~~, and~~

15           ~~[(8) for a claimant other than an original contractor,~~  
16 ~~a statement identifying the date each notice of the claim was sent~~  
17 ~~to the owner and the method by which the notice was sent].~~

18          (b) The claimant may attach the information required by  
19 Subsection (a) to the lien claim [~~to the affidavit a copy of any~~  
20 ~~applicable written agreement or contract and a copy of each notice~~  
21 ~~sent to the owner].~~

22          (c) The lien claim [~~affidavit~~] is not required to set forth  
23 individual items of work done or material furnished [~~or specially~~  
24 ~~fabricated~~]. The lien claim [~~affidavit~~] may use broad descriptive  
25 terms, [~~any~~] abbreviations, or symbols customary in the trade.

26          SECTION 10. Section 53.056, Property Code, is amended to  
27 read as follows:

1           Sec. 53.056. SUBCONTRACTOR [~~DERIVATIVE CLAIMANT~~]: NOTICE  
2 TO OWNER OR ORIGINAL CONTRACTOR. (a) Except as provided by  
3 Section 53.035 [~~Subchapter K~~], a subcontractor [~~claimant other than~~  
4 ~~an original contractor~~] must give the notice prescribed by this  
5 section to the owner, or reputed owner, and the original contractor  
6 for the lien to be valid.

7           (b) The notice must include:

8                 (1) a general description of the labor and materials  
9 furnished or to be furnished by the subcontractor;

10                (2) the name, address, and telephone number of the  
11 subcontractor;

12                (3) the name of the person who contracted with the  
13 subcontractor for the labor or materials; and

14                (4) a sufficient description of the real property to  
15 which the labor and materials are furnished, or are to be furnished,  
16 including a legal description, subdivision plat, or street address  
17 [~~If the lien claim arises from a debt incurred by a subcontractor,~~  
18 ~~the claimant must give to the original contractor written notice of~~  
19 ~~the unpaid balance. The claimant must give the notice not later~~  
20 ~~than the 15th day of the second month following each month in which~~  
21 ~~all or part of the claimant's labor was performed or material~~  
22 ~~delivered. The claimant must give the same notice to the owner or~~  
23 ~~reputed owner and the original contractor not later than the 15th~~  
24 ~~day of the third month following each month in which all or part of~~  
25 ~~the claimant's labor was performed or material or specially~~  
26 ~~fabricated material was delivered].~~

27           (c) Except as provided by Section 53.034(c), the

1 subcontractor's notice must be sent not later than the 30th day  
2 after the first date the subcontractor provides the labor or  
3 materials for the improvement of the owner's property. If a  
4 subcontractor fails to send a timely notice under this subsection  
5 or Section 53.034(c), the subcontractor may claim a lien only for  
6 the labor and materials furnished not earlier than the 30th day  
7 before the date the notice was sent and for all labor and materials  
8 furnished after the date the notice was sent [~~If the lien claim~~  
9 ~~arises from a debt incurred by the original contractor, the~~  
10 ~~claimant must give notice to the owner or reputed owner, with a copy~~  
11 ~~to the original contractor, in accordance with Subsection (b)].~~

12 (d) A subcontractor may send only one notice to an owner  
13 under this section with respect to all labor and materials  
14 furnished or to be furnished for the improvement of the owner's  
15 property [~~To authorize the owner to withhold funds under Subchapter~~  
16 ~~D, the notice to the owner must state that if the claim remains~~  
17 ~~unpaid, the owner may be personally liable and the owner's property~~  
18 ~~may be subjected to a lien unless:~~

19 ~~[(1) the owner withholds payments from the contractor~~  
20 ~~for payment of the claim; or~~

21 ~~[(2) the claim is otherwise paid or settled].~~

22 (e) If the notice is sent by registered or certified mail,  
23 the effective date of the notice is the date the notice is deposited  
24 for mailing. The effective date of a notice delivered by other  
25 means is the date the notice is received [~~The notice must be sent by~~  
26 ~~registered or certified mail and must be addressed to the owner or~~  
27 ~~reputed owner or the original contractor, as applicable, at his~~

1 ~~last known business or residence address~~].

2 (f) The notice is not defective if, after the date of the  
3 notice, the subcontractor furnishes labor or materials that are not  
4 within the scope of the notice's general description of the labor  
5 and materials furnished or to be furnished [~~A copy of the statement~~  
6 ~~or billing in the usual and customary form is sufficient as notice~~  
7 ~~under this section~~].

8 SECTION 11. The heading to Subchapter D, Chapter 53,  
9 Property Code, is amended to read as follows:

10 SUBCHAPTER D. BILLS PAID AFFIDAVIT [~~FUNDS WITHHELD BY OWNER~~  
11 ~~FOLLOWING NOTICE~~]

12 SECTION 12. The heading to Section 53.085, Property Code,  
13 is amended to read as follows:

14 Sec. 53.085. BILLS PAID AFFIDAVIT REQUIRED.

15 SECTION 13. The heading to Subchapter E, Chapter 53,  
16 Property Code, is amended to read as follows:

17 SUBCHAPTER E. TERMINATION OR ABANDONMENT OF WORK [~~REQUIRED~~  
18 ~~RETAINAGE FOR BENEFIT OF LIEN CLAIMANTS~~]

19 SECTION 14. Subsections (a) and (b), Section 53.107,  
20 Property Code, are amended to read as follows:

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

26 (1) before the date of termination or abandonment,  
27 sent [~~given~~] notice to the owner as provided by Section 53.056[~~7~~

1 ~~53.057, or 53.058~~; [~~or~~]

2 (2) before the date of termination or abandonment,  
3 sent to the owner [~~by certified or registered mail~~] a written  
4 request for notice of termination or abandonment; or

5 (3) did not send a written request for notice of  
6 termination or abandonment or a notice required under Section  
7 53.056, but provided to the owner written notice that the  
8 subcontractor provided labor, material, or services to the owner's  
9 property.

10 (b) The notice must contain:

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

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

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

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

18 (5) a statement that the original contract has been  
19 terminated or that performance under the contract has been  
20 abandoned; and

21 (6) the date of the termination or abandonment [~~, and~~

22 [~~(7) a conspicuous statement that a claimant may not~~  
23 ~~have a lien on the retained funds unless the claimant files an~~  
24 ~~affidavit claiming a lien not later than the 40th day after the date~~  
25 ~~of the termination or abandonment]~~.

26 SECTION 15. Subsection (a), Section 53.122, Property Code,  
27 is amended to read as follows:

1 (a) Except as provided by [~~Subchapter E and~~] Section  
2 53.124(e), perfected mechanic's liens that have the same inception  
3 date are on equal footing without reference to the date of filing  
4 the [~~affidavit claiming the~~] lien claim.

5 SECTION 16. The heading to Section 53.124, Property Code,  
6 is amended to read as follows:

7 Sec. 53.124. INCEPTION OF [~~MECHANIC'S~~] LIEN.

8 SECTION 17. Subsections (a) and (e), Section 53.124,  
9 Property Code, are amended to read as follows:

10 (a) Except as provided by Subsection (e), [~~for purposes of~~  
11 ~~Section 53.123,~~] the time of inception of a mechanic's lien for an  
12 original contractor and subcontractor is the commencement of  
13 construction of improvements or delivery of materials to the land  
14 on which the improvements are to be located and on which the  
15 materials are to be used.

16 (e) The time of inception of a lien for an architect,  
17 engineer, surveyor, landscape original contractor or  
18 subcontractor, or demolition original contractor or subcontractor  
19 is the date the person files a lien claim [~~that is created under~~  
20 ~~Section 53.021(c), (d), or (e) is the date of recording of an~~  
21 ~~affidavit of lien under Section 53.052. The priority of a lien~~  
22 ~~claimed by a person entitled to a lien under Section 53.021(c), (d),~~  
23 ~~or (e) with respect to other mechanic's liens is determined by the~~  
24 ~~date of recording. A lien created under Section 53.021(c), (d), or~~  
25 ~~(e) is not valid or enforceable against a grantee or purchaser who~~  
26 ~~acquires an interest in the real property before the time of~~  
27 ~~inception of the lien]~~.

1 SECTION 18. Sections 53.152, 53.154, 53.156, 53.157,  
2 53.158, and 53.172, Property Code, are amended to read as follows:

3 Sec. 53.152. RELEASE OF CLAIM OR LIEN. (a) If an owner,  
4 the original contractor, or a person who pays or satisfies any  
5 indebtedness secured by a lien filed under this chapter submits to  
6 the lien holder [~~When a debt for labor or materials is satisfied or~~  
7 ~~paid by collected funds, the person who furnished the labor or~~  
8 ~~materials shall, not later than the 10th day after the date of~~  
9 ~~receipt of]~~ a written request for a release of the lien, the lien  
10 holder shall[~~7~~] furnish to the requesting person a release of the  
11 indebtedness and any lien claimed[~~7~~] to the extent of the  
12 indebtedness paid. [~~An owner, the original contractor, or any~~  
13 ~~person making the payment may request the release.~~]

14 (b) A release of lien must be furnished not later than the  
15 10th day after the date of receipt of a written request and must be  
16 in a form that would permit it to be filed of record.

17 Sec. 53.154. FORECLOSURE OF LIEN; VENUE. (a) A mechanic's  
18 lien may be foreclosed only on judgment of a court of competent  
19 jurisdiction foreclosing the lien and ordering the sale of the  
20 property subject to the lien.

21 (b) A suit to foreclose the lien must be brought in a court  
22 of competent jurisdiction in the county in which the real property  
23 that is subject to the lien is located.

24 Sec. 53.156. COSTS AND ATTORNEY'S FEES. In any proceeding  
25 to foreclose a lien or to enforce a claim against a bond issued  
26 under Subchapter H[~~7-I~~] or J or in any proceeding to declare that  
27 any lien or claim is invalid or unenforceable in whole or in part,



1 the court shall award costs and reasonable attorney's fees as are  
2 equitable and just. With respect to a lien or claim arising out of  
3 a residential construction contract, the court is not required to  
4 order the property owner to pay costs and attorney's fees under this  
5 section.

6 Sec. 53.157. DISCHARGE OF LIEN. A mechanic's lien claim [~~or~~  
7 ~~affidavit claiming a mechanic's lien~~] filed under Section 53.052  
8 may be discharged of record by:

9 (1) recording a lien release signed by the claimant  
10 under Section 53.152;

11 (2) failing to institute suit to foreclose the lien in  
12 the county in which the property is located within the period  
13 prescribed by Section 53.158 [~~, 53.175, or 53.208~~]; or

14 (3) recording the original or certified copy of a  
15 final judgment or decree of a court of competent jurisdiction  
16 providing for the discharge[~~+~~

17 [~~(4) filing the bond and notice in compliance with~~  
18 ~~Subchapter H,~~

19 [~~(5) filing the bond in compliance with Subchapter I,~~  
20 ~~or~~

21 [~~(6) recording a certified copy of the order removing~~  
22 ~~the lien under Section 53.160 and a certificate from the clerk of~~  
23 ~~the court that states that no bond or deposit as described by~~  
24 ~~Section 53.161 was filed by the claimant within 30 days after the~~  
25 ~~date the order was entered].~~

26 Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN.

27 (a) Except as provided by Subsection (b), suit must be brought to

1 foreclose the lien within two years after the last day a claimant  
2 may file the lien claim [~~affidavit~~] under Section 53.052 [~~or within~~  
3 ~~one year after completion, termination, or abandonment of the work~~  
4 ~~under the original contract under which the lien is claimed,~~  
5 ~~whichever is later~~].

6 (b) For a claim arising from a residential construction  
7 project, suit must be brought to foreclose the lien within one year  
8 after the last day a claimant may file a lien claim [~~affidavit~~]  
9 under Section 53.052 [~~or within one year after completion,~~  
10 ~~termination, or abandonment of the work under the original contract~~  
11 ~~under which the lien is claimed, whichever is later~~].

12 Sec. 53.172. BOND REQUIREMENTS. The bond must:

13 (1) describe the property on which the liens are  
14 claimed;

15 (2) refer to each lien claimed in a manner sufficient  
16 to identify it;

17 (3) be in an amount that is double the amount of the  
18 liens referred to in the bond unless the total amount claimed in the  
19 liens exceeds \$60,000 [~~\$40,000~~], in which case the bond must be in  
20 an amount that is the greater of 1-1/2 times the amount of the liens  
21 or the sum of \$60,000 [~~\$40,000~~] and the amount of the liens;

22 (4) be payable to the parties claiming the liens;

23 (5) be executed by:

24 (A) the party filing the bond as principal; and

25 (B) a corporate surety authorized and admitted to  
26 do business under the law in this state and licensed by this state  
27 to execute the bond as surety, subject to Sections

1 3503.001-3503.005, Insurance Code [~~Section 1, Chapter 87, Acts of~~  
2 ~~the 56th Legislature, Regular Session, 1959 (Article 7.19-1,~~  
3 ~~Vernon's Texas Insurance Code)~~]; and

4 (6) be conditioned substantially that the principal  
5 and sureties will pay to the named obligees or to their assignees  
6 the amount that the named obligees would have been entitled to  
7 recover if their claims had been proved to be valid and enforceable  
8 liens on the property.

9 SECTION 19. The heading to Section 53.173, Property Code,  
10 is amended to read as follows:

11 Sec. 53.173. NOTICE OF BOND TO INDEMNIFY.

12 SECTION 20. Subsections (c) and (d), Section 53.173,  
13 Property Code, are amended to read as follows:

14 (c) The notice must be served on each obligee by mailing a  
15 copy of the notice and the bond to the obligee by certified United  
16 States mail, return receipt requested, addressed to the claimant at  
17 the address stated in the lien claim [~~affidavit~~] for the obligee.

18 (d) If the claimant's lien claim [~~affidavit~~] does not state  
19 the claimant's address and the address is not available to the  
20 principal in a notice sent by the lien claimant under Section  
21 53.056, the notice is not required to be mailed to the claimant.

22 SECTION 21. Subsection (f), Section 53.254, Property Code,  
23 is amended to read as follows:

24 (f) A [~~An affidavit for~~] lien claim filed under this  
25 subchapter that relates to a homestead must contain the following  
26 notice conspicuously printed, stamped, or typed in a size equal to  
27 at least 10-point boldface or the computer equivalent, at the top of

1 the page:

2 "NOTICE: THIS IS NOT A LIEN. THIS IS ONLY [~~AN AFFIDAVIT~~  
3 ~~CLAIMING~~] A LIEN CLAIM."

4 SECTION 22. Subsection (b), Section 53.255, Property Code,  
5 is amended to read as follows:

6 (b) The disclosure statement must read substantially  
7 similar to the following:

8 "KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You  
9 are about to enter into a transaction to build a new home or remodel  
10 existing residential property. Texas law requires your contractor  
11 to provide you with this brief overview of some of your rights,  
12 responsibilities, and risks in this transaction.

13 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may  
14 not require you to convey your real property to your contractor as a  
15 condition to the agreement for the construction of improvements on  
16 your property.

17 "KNOW YOUR CONTRACTOR. Before you enter into your agreement  
18 for the construction of improvements to your real property, make  
19 sure that you have investigated your contractor. Obtain and verify  
20 references from other people who have used the contractor for the  
21 type and size of construction project on your property.

22 "GET IT IN WRITING. Make sure that you have a written  
23 agreement with your contractor that includes: (1) a description of  
24 the work the contractor is to perform; (2) the required or estimated  
25 time for completion of the work; (3) the cost of the work or how the  
26 cost will be determined; and (4) the procedure and method of  
27 payment, including [~~provisions for statutory retainage and~~]

1 conditions for final payment. If your contractor made a promise,  
2 warranty, or representation to you concerning the work the  
3 contractor is to perform, make sure that promise, warranty, or  
4 representation is specified in the written agreement. An oral  
5 promise that is not included in the written agreement may not be  
6 enforceable under Texas law.

7 "READ BEFORE YOU SIGN. Do not sign any document before you  
8 have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN  
9 UNTRUE STATEMENT. Take your time in reviewing documents. If you  
10 borrow money from a lender to pay for the improvements, you are  
11 entitled to have the loan closing documents furnished to you for  
12 review at least one business day before the closing. Do not waive  
13 this requirement unless a bona fide emergency or another good cause  
14 exists, and make sure you understand the documents before you sign  
15 them. If you fail to comply with the terms of the documents, you  
16 could lose your property. You are entitled to have your own  
17 attorney review any documents. If you have any question about the  
18 meaning of a document, consult an attorney.

19 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before  
20 construction commences, your contractor is required to provide you  
21 with a list of the subcontractors and suppliers the contractor  
22 intends to use on your project. Your contractor is required to  
23 supply updated information on any subcontractors and suppliers  
24 added after the list is provided. Your contractor is not required  
25 to supply this information if you sign a written waiver of your  
26 rights to receive this information.

27 "MONITOR THE WORK. Lenders and governmental authorities may

1 inspect the work in progress from time to time for their own  
2 purposes. These inspections are not intended as quality control  
3 inspections. Quality control is a matter for you and your  
4 contractor. To ensure that your home is being constructed in  
5 accordance with your wishes and specifications, you should inspect  
6 the work yourself or have your own independent inspector review the  
7 work in progress.

8 "MONITOR PAYMENTS. If you use a lender, your lender is  
9 required to provide you with a periodic statement showing the money  
10 disbursed by the lender from the proceeds of your loan. Each time  
11 your contractor requests payment from you or your lender for work  
12 performed, your contractor is also required to furnish you with a  
13 disbursement statement that lists the name and address of each  
14 subcontractor or supplier that the contractor intends to pay from  
15 the requested funds. Review these statements and make sure that the  
16 money is being properly disbursed.

17 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if  
18 a subcontractor or supplier who furnishes labor or materials for  
19 the construction of improvements on your property is not paid, you  
20 may become liable and your property may be subject to a lien for the  
21 unpaid amount, even if you have not contracted directly with the  
22 subcontractor or supplier. ~~[To avoid liability, you should take~~  
23 ~~the following actions:~~

24 ~~[(1) If you receive a written notice from a~~  
25 ~~subcontractor or supplier, you should withhold payment from your~~  
26 ~~contractor for the amount of the claim stated in the notice until~~  
27 ~~the dispute between your contractor and the subcontractor or~~

1 ~~supplier is resolved. If your lender is disbursing money directly~~  
2 ~~to your contractor, you should immediately provide a copy of the~~  
3 ~~notice to your lender and instruct the lender to withhold payment in~~  
4 ~~the amount of the claim stated in the notice. If you continue to pay~~  
5 ~~the contractor after receiving the written notice without~~  
6 ~~withholding the amount of the claim, you may be liable and your~~  
7 ~~property may be subject to a lien for the amount you failed to~~  
8 ~~withhold.~~

9           ~~[(2) During construction and for 30 days after final~~  
10 ~~completion, termination, or abandonment of the contract by the~~  
11 ~~contractor, you should withhold or cause your lender to withhold 10~~  
12 ~~percent of the amount of payments made for the work performed by~~  
13 ~~your contractor. This is sometimes referred to as 'statutory~~  
14 ~~retainage.'~~ If you choose not to withhold the 10 percent for at  
15 ~~least 30 days after final completion, termination, or abandonment~~  
16 ~~of the contract by the contractor and if a valid claim is timely~~  
17 ~~made by a claimant and your contractor fails to pay the claim, you~~  
18 ~~may be personally liable and your property may be subject to a lien~~  
19 ~~up to the amount that you failed to withhold.]~~

20           "If a subcontractor or supplier who furnishes labor or  
21 materials for the construction of improvements on your property is  
22 not paid, the subcontractor or supplier ~~[claim is not paid within a~~  
23 ~~certain time period, the claimant]~~ is required to file a mechanic's  
24 lien claim ~~[affidavit]~~ in the real property records in the county  
25 where the property is located. A mechanic's lien claim ~~[affidavit]~~  
26 is not a lien on your property, but the filing of the claim  
27 ~~[affidavit]~~ could result in a court imposing a lien on your property

1 if the claimant is successful in litigation to enforce the lien  
2 claim.

3 "SOME CLAIMS MAY NOT BE VALID. When ~~[you receive a written~~  
4 ~~notice of a claim or when]~~ a mechanic's lien claim ~~[affidavit]~~ is  
5 filed on your property, you should know your legal rights and  
6 responsibilities regarding the claim. Not all claims are valid. A  
7 ~~[notice of a claim by a]~~ subcontractor or supplier is required to  
8 send a notice and file ~~[be sent, and]~~ the mechanic's lien claim  
9 ~~[affidavit is required to be filed,]~~ within strict time periods.  
10 The notice and the lien claim ~~[affidavit]~~ must contain certain  
11 information. All claimants may not fully comply with the legal  
12 requirements to collect on a claim. ~~[If you have paid the~~  
13 ~~contractor in full before receiving a notice of a claim and have~~  
14 ~~fully complied with the law regarding statutory retainage, you may~~  
15 ~~not be liable for that claim.]~~ Accordingly, you should consult your  
16 attorney when you receive a written notice of a claim to determine  
17 the true extent of your liability or potential liability for that  
18 claim.

19 "OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. ~~[When you~~  
20 ~~receive a notice of claim, do not release withheld funds without~~  
21 ~~obtaining a signed and notarized release of lien and claim from the~~  
22 ~~claimant.]~~ You can ~~[also]~~ reduce the risk of having a claim filed  
23 by a subcontractor or supplier by requiring as a condition of each  
24 payment made by you or your lender that your contractor furnish you  
25 with an affidavit stating that all bills have been paid. Under  
26 Texas law, on final completion of the work and before final payment,  
27 the contractor is required to furnish you with an affidavit stating



1 that all bills have been paid. If the contractor discloses any  
2 unpaid bill in the affidavit, you should withhold payment in the  
3 amount of the unpaid bill until you receive a waiver of lien or  
4 release from that subcontractor or supplier.

5 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to  
6 obtain a title insurance policy to insure that the title to your  
7 property and the existing improvements on your property are free  
8 from liens claimed by subcontractors and suppliers. If your policy  
9 is issued before the improvements are completed and covers the  
10 value of the improvements to be completed, you should obtain, on the  
11 completion of the improvements and as a condition of your final  
12 payment, a 'completion of improvements' policy endorsement. This  
13 endorsement will protect your property from liens claimed by  
14 subcontractors and suppliers that may arise from the date the  
15 original title policy is issued to the date of the endorsement."

16 SECTION 23. Subsection (d), Section 56.054, Business &  
17 Commerce Code, is amended to read as follows:

18 (d) A contingent payor is considered to have exercised  
19 diligence for purposes of Subsection (b)(1) under a contract for a  
20 private project governed by Chapter 53, Property Code, if the  
21 contingent payee receives in writing from the contingent payor:

22 (1) the name, address, and business telephone number  
23 of the primary obligor;

24 (2) a description, legally sufficient for  
25 identification, of the property on which the improvements are being  
26 constructed;

27 (3) ~~the name and address of the surety on any payment~~

1 ~~bond provided under Subchapter I, Chapter 53, Property Code, to~~  
2 ~~which any notice of claim should be sent,~~

3           ~~(4)~~ if a loan has been obtained for the construction  
4 of improvements:

5           (A) a statement, furnished by the primary obligor  
6 and supported by reasonable and credible evidence from all  
7 applicable lenders, of the amount of the loan;

8           (B) a summary of the terms of the loan;

9           (C) a statement of whether there is foreseeable  
10 default of the primary obligor; and

11           (D) the name, address, and business telephone  
12 number of the borrowers and lenders; and

13           (4) ~~(5)~~ a statement, furnished by the primary  
14 obligor and supported by reasonable and credible evidence from all  
15 applicable banks or other depository institutions, of the amount,  
16 source, and location of funds available to pay the balance of the  
17 contract amount if there is no loan or the loan is not sufficient to  
18 pay for all of the construction of the improvements.

19           SECTION 24. Subdivision (3), Section 3503.051, Insurance  
20 Code, is amended to read as follows:

21           (3) "Notice of claim" means a written notification by  
22 a claimant who makes a claim for payment from the surety company.  
23 The term does not include a routine statutory notice required by  
24 Section 53.056 [~~53.056(b), 53.057, 53.058~~], 53.252(b), or 53.253,  
25 Property Code, or Section 2253.047, Government Code.

26           SECTION 25. The following provisions of the Property Code  
27 are repealed:

- 1           (1) Subdivisions (1), (2), (11), and (12), Section  
2 53.001;
- 3           (2) Sections 53.002 and 53.003;
- 4           (3) Subsection (b), Section 53.021;
- 5           (4) Sections 53.023, 53.024, and 53.025;
- 6           (5) Sections 53.051, 53.053, 53.055, 53.057, 53.058,  
7 53.081, 53.082, 53.083, and 53.084;
- 8           (6) Subsections (b), (c), and (d), Section 53.085;
- 9           (7) Sections 53.101, 53.102, 53.103, 53.104, 53.105,  
10 and 53.106;
- 11           (8) Subsection (d), Section 53.107, Subsection (c),  
12 Section 53.122, and Subsections (c) and (d), Section 53.124;
- 13           (9) Sections 53.153, 53.155, 53.159, 53.160, 53.161,  
14 and 53.162;
- 15           (10) Subchapter I, Chapter 53;
- 16           (11) Sections 53.252 and 53.253; and
- 17           (12) Subsection (g), Section 53.254.

18           SECTION 26. The changes in law made by this Act apply only  
19 to an original contract entered into on or after the effective date  
20 of this Act. An original contract entered into before the effective  
21 date of this Act is governed by the law as it existed immediately  
22 before the effective date of this Act, and that law is continued in  
23 effect for that purpose.

24           SECTION 27. This Act takes effect January 1, 2014.