

By: Deuell

S.B. No. 295

A BILL TO BE ENTITLED

1 AN ACT  
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.