

## **BILL ANALYSIS**

C.S.H.B. 2268  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that construction contracts often incorporate provisions of other documents, such as the original contract between the property owner and general contractor, by reference and that these downstream contracts do not always include copies of those incorporated documents. It has been suggested that subcontractors in these situations may not be aware of provisions in the original contract to which the subcontractors are bound because they were contained in documents that were not provided to the subcontractor. C.S.H.B. 2268 seeks to address these concerns by establishing the circumstances under which provisions of a construction contract that are incorporated by reference to another document are voidable.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2268 amends the Business & Commerce Code to make a provision in a construction contract between an original contractor and owner, between a subcontractor and an original contractor, or between a subcontractor and another subcontractor that incorporates the terms and conditions of another document, by reference or otherwise, voidable by the original contractor, the subcontractor, or the subcontractor who is to furnish labor or materials to fulfill an obligation to the other subcontractor, as applicable, if, on written request, the owner, the original contractor, or the subcontractor to whom the requesting subcontractor is obligated, as applicable, does not provide a copy of the incorporated document to the original contractor or subcontractor on or before the 10th day before the date the contract is executed. The bill authorizes the owner, original contractor, or subcontractor to request the other party to the contract to sign, date, and submit to the owner, original contractor, or subcontractor, as applicable, a written statement acknowledging receipt of the copy of the incorporated document and requires the written statement acknowledging receipt to be provided separately from the contract. These bill provisions do not apply to the incorporation of a publicly available document and do not preclude an owner, original contractor, or subcontractor from redacting information from a document to be incorporated into a contract, provided that any redacted information may not be incorporated into the contract by reference or otherwise. The bill defines "copy," "original contract," "original contractor," "owner," and "subcontractor."

C.S.H.B. 2268 establishes that a contract provision made void by a party to the contract under the bill's provisions is void only to the extent of the contract provision's applicability to the

incorporated document not provided to the party. The bill authorizes an owner, original contractor, or subcontractor to provide a copy of an incorporated document to the other party to a contract by providing a link to the document on a website or file hosting service that may be accessed by the other party free of charge for the duration of the contract. The bill establishes that the version of the incorporated document that is accessible on the date the party receives the information necessary to access the document is the version that is incorporated into the contract.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2268 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following provisions:

- a specification that the requisite copy of the incorporated document is to be provided on the written request of the original contractor or subcontractor, as applicable;
- an authorization for the incorporated document to be provided via a website or free file hosting service;
- a provision establishing that the version of an incorporated document provided electronically is the version incorporated into the contract;
- an authorization for a party to request a separate signed and dated statement acknowledging receipt of a copy of the incorporated document;
- a requirement that the written statement acknowledging receipt be provided separately from the contract; and
- a specified deadline by which the copy of the incorporated document is to be provided.

The substitute extends the applicability of the bill's provisions to a contract between a subcontractor and another subcontractor.