86R5100 AJA-F

By:  Hughes S.B. No. 845

A BILL TO BE ENTITLED

AN ACT

relating to the discharge of mechanic's, contractor's, and 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 Sections 53.0001 and 53.0002 to read as follows:

Sec. 53.0001.  PURPOSE.  This chapter is enacted for the protection of unpaid laborers and materialmen who are diligent in perfecting liens in compliance with Subchapter C or K, as well as owners of property for whom improvements have been made.

Sec. 53.0002.  CONSTRUCTION. (a) This chapter is not intended to and does not create rights against a property owner in the absence of a valid lien that:

(1)  secures a claim that has not been paid or settled; and

(2)  has not been discharged or indemnified against in compliance with Subchapter H or I.

(b)  Once a lien perfected under this chapter or the claim secured by the lien is paid, settled, discharged, or indemnified against in compliance with Subchapter H or I:

(1)  the owner's liability is discharged and extinguished; and

(2)  if applicable, the claimant's exclusive remedy under this chapter is by action on a bond filed in compliance with Subchapter H or I.

SECTION 2.  Section 53.021, Property Code, is amended by adding Subsections (f) and (g) to read as follows:

(f)  A person does not have a lien under this section if the lien or the claim secured by the lien has been paid, settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court.

(g)  If a bond and notice are filed in compliance with Subchapter H or a bond is filed in compliance with Subchapter I, a lien securing a claim indemnified against by the bond is discharged for all purposes and the claimant's exclusive remedy is by action on the bond. After the lien is discharged:

(1)  any claim or cause of action arising under this chapter, except for a claim or cause of action provided by Subchapter H or I, is extinguished; and

(2)  no claim or cause of action arising under this chapter may be maintained against the owner.

SECTION 3.  Section 53.054, Property Code, is amended by adding Subsection (d) to read as follows:

(d)  The amount of the claim stated in the affidavit may not include the amount of any claim that has been paid, settled, discharged, or indemnified against under Subchapter H or I. An affidavit that violates this subsection is subject to Chapter 12, Civil Practice and Remedies Code, and may be considered to be a fraudulent lien for purposes of that chapter.

SECTION 4.  Section 53.081, Property Code, is amended by adding Subsection (e) to read as follows:

(e)  An owner's authority to withhold funds under this section to pay a claim terminates if the claim is paid under Section 53.083 or the claim is otherwise settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court.

SECTION 5.  Section 53.082, Property Code, is amended to read as follows:

Sec. 53.082.  TIME FOR WHICH FUNDS ARE WITHHELD. Unless the owner is released from liability under this subchapter by a payment [~~is~~] made under Section 53.083 or by the claim being [~~is~~] otherwise settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court, the owner shall retain the funds withheld until:

(1)  the time for filing the affidavit of mechanic's lien has passed; or

(2)  if a lien affidavit has been filed, until the lien claim has been satisfied or released.

SECTION 6.  Sections 53.083(b) and (d), Property Code, are amended to read as follows:

(b)  The claimant must send a copy of the demand to the original contractor. The original contractor may give the owner written notice that the contractor intends to dispute the claim. The original contractor must give the notice not later than the 30th day after the day the original contractor [~~he~~] receives the copy of the demand. If the original contractor does not give the owner timely notice, the original contractor [~~he~~] is considered to have assented to the demand and the owner shall pay the claim, to the extent:

(1)  the claim is supported by a lien perfected in compliance with Subchapter C or K, as applicable; and

(2)  the claim and the lien have not been paid, settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court.

(d)  Unless the lien has been secured, the demand may not be made after expiration of the time within which the claimant may secure the lien for the claim. The demand may not be made for an amount that exceeds the amount stated in the lien affidavit.

SECTION 7.  Section 53.084, Property Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b)  If the owner has received the notices required by Subchapter C or K, if the lien has been secured, if the lien and the claim secured by the lien have not been paid, settled, discharged, or indemnified against under Subchapter H or I, and if the claim has been reduced to final judgment, the owner is liable and the owner's property is subject to a claim for any money paid to the original contractor after the owner was authorized to withhold funds under this subchapter. The owner is liable for that amount in addition to any amount for which the owner [~~he~~] is liable under Subchapter E.

(c)  The owner's cumulative liability under this section and Subchapter E on any claim does not exceed the amount of the claim stated in the affidavit perfecting the lien that has been reduced to final judgment.

SECTION 8.  Section 53.103, Property Code, is amended to read as follows:

Sec. 53.103.  LIEN ON RETAINED FUNDS. (a) Except as provided by this section, a [~~A~~] claimant has a lien on the retained funds if the claimant:

(1)  sends the notices required by this chapter in the time and manner required; and

(2)  except as allowed by Section 53.057(f), files an affidavit claiming a lien not later than the 30th day after the earliest of the date:

(A)  the work is completed;

(B)  the original contract is terminated; or

(C)  the original contractor abandons performance under the original contract.

(b)  A claimant does not have a lien on the retained funds if the lien or the claim secured by the lien has been paid, settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court.

(c)  If a bond and notice are filed in compliance with Subchapter H or a bond is filed in compliance with Subchapter I, a lien on retained funds securing a claim indemnified against by the bond is discharged for all purposes and the claimant's exclusive remedy is by action on the bond. The claimant is not entitled to recover more than the claimant would be entitled to recover under Section 53.104 if the lien had not been discharged.

(d)  No claim or cause of action may be maintained against the owner on the retained funds after the lien is discharged as described by Subsection (c).

SECTION 9.  Section 53.104, Property Code, is amended to read as follows:

Sec. 53.104.  PREFERENCES. (a) Individual artisans and mechanics are entitled to a preference to the retained funds or a bond indemnifying against their respective liens, as applicable, and shall share proportionately to the extent of their claims for wages and fringe benefits earned.

(b)  After payment of artisans and mechanics who are entitled to a preference under Subsection (a), other participating claimants share proportionately in the balance of the retained funds or the bond indemnifying against their respective liens, as applicable.

SECTION 10.  Section 53.105, Property Code, is amended to read as follows:

Sec. 53.105.  OWNER'S LIABILITY FOR FAILURE TO RETAIN. (a) Except as provided by Subsection (a-1), if [~~If~~] the owner fails or refuses to comply with this subchapter, the claimants complying with Subchapter C or this subchapter have a lien, at least to the extent of the amount that should have been retained from the original contract under which they are claiming, against the house, building, structure, fixture, or improvement and all of its properties and against the lot or lots of land necessarily connected.

(a-1)  If the lien has been indemnified against under Subchapter H or I, claimants complying with Subchapter C or this subchapter do not have a lien under Subsection (a) and the claimants' exclusive remedy is by action on the bond indemnifying against their respective liens, at least to the extent of the amount that should have been retained from the original contract under which they are claiming.

(b)  The claimants share the lien under Subsection (a) proportionately in accordance with the preference provided by Section 53.104. If the lien has been indemnified against under Subchapter H or I, a claimant may not recover more on the bond than the claimant would be entitled to recover under Section 53.104 if the lien had not been discharged.

SECTION 11.  Section 53.157, Property Code, is amended to read as follows:

Sec. 53.157.  DISCHARGE OF LIEN.  (a)  A mechanic's lien or affidavit claiming a mechanic's lien filed under Section 53.052 may be discharged of record by:

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

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

(3)  recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction providing for the discharge;

(4)  filing the bond and notice in compliance with Subchapter H;

(5)  filing the bond in compliance with Subchapter I; or

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

(b)  With respect to any claim for compensation against an owner existing solely by virtue of a mechanic's lien or affidavit claiming a mechanic's lien filed under Section 53.052 that has been discharged of record as provided by this section:

(1)  the owner is discharged from liability on the claim; and

(2)  no claim or cause of action arising under this chapter may be maintained against the owner after the lien is discharged.

SECTION 12.  The change in law made by this Act applies only to an original contract entered into on or after the effective date of this Act. An original contract entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 13.  This Act takes effect September 1, 2019.