

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

1 Subchapter H or I.

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

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

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

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

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

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

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

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

1 (e) An owner's authority to withhold funds under this
2 section to pay a claim terminates if the claim is paid under Section
3 53.083 or the claim is otherwise settled, discharged, indemnified
4 against under Subchapter H or I, or determined to be invalid by a
5 final judgment of a court.

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

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

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

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

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

20 (b) The claimant must send a copy of the demand to the
21 original contractor. The original contractor may give the owner
22 written notice that the contractor intends to dispute the claim.
23 The original contractor must give the notice not later than the 30th
24 day after the day the original contractor ~~he~~ receives the copy of
25 the demand. If the original contractor does not give the owner
26 timely notice, the original contractor ~~he~~ is considered to have
27 assented to the demand and the owner shall pay the claim, to the

1 extent:

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

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

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

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

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

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

27 SECTION 8. Section 53.103, Property Code, is amended to

1 read as follows:

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

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

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

10 (A) the work is completed;

11 (B) the original contract is terminated; or

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

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

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

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

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

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

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

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

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

23 (a-1) If the lien has been indemnified against under
24 Subchapter H or I, claimants complying with Subchapter C or this
25 subchapter do not have a lien under Subsection (a) and the
26 claimants' exclusive remedy is by action on the bond indemnifying
27 against their respective liens, at least to the extent of the amount

1 that should have been retained from the original contract under
2 which they are claiming.

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

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

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

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

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

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

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

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

26 (6) recording a certified copy of the order removing
27 the lien under Section 53.160 and a certificate from the clerk of

1 the court that states that no bond or deposit as described by
2 Section 53.161 was filed by the claimant within 30 days after the
3 date the order was entered.

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

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

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

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

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