

## **BILL ANALYSIS**

Senate Research Center

H.B. 1477  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In a growing trend, private entities are leasing public property and then constructing improvements. An unfortunate unintended consequence of the practice is that there is no effective protection of the right to payment for the subcontractors and suppliers whose labor and materials are used for the newly built improvement. Subcontractor and supplier claimants cannot file mechanic's liens against the real property, because it is owned by a public agency and is thus immune from attachment by lien or otherwise.

H.B. 1477 amends the Government Code to extend the applicability of provisions governing the use of performance and payment bonds for an applicable public work contract to a public work contract of qualifying value for work performed on public property leased by a nongovernmental entity from a governmental entity.

H.B. 1477 amends current law relating to performance and payment bonds for public work contracts on public property leased to a nongovernmental entity.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 2253.001(3) and (4), Government Code, as follows:

(3) Redefines "prime contractor" to include a person, firm, or corporation that makes a public work contract with a person who leases any public property, other than a person who leases property from a river authority created pursuant to Section 59, Article XVI, Texas Constitution, that owns electric generation capacity in excess of 1,000 megawatts. Makes nonsubstantive changes.

(4) Redefines "public work contract" to include a contract for constructing, altering, or repairing a public building or carrying out or completing any public work, including work performed on property owned by a governmental entity or on public property leased by the governmental entity to a nongovernmental entity. Provides that "public work contract" does not include any contract entered into by a nongovernmental entity that leases property from a river authority created pursuant to Section 59, Article XVI, Texas Constitution, that owns electric generation capacity in excess of 1,000 megawatts.

SECTION 2. Amends Section 2253.021(a), Government Code, as follows:

(a) Requires a governmental entity that makes a public work contract with a prime contractor or authorizes a nongovernmental entity leasing public property from the governmental entity to enter into a public work contract with a prime contractor to require the contractor, before beginning the work, to execute to the governmental entity a certain bond.

SECTION 3. Amends Sections 2253.024(a) and (b), Government Code, as follows:

(a) Requires a prime contractor, on the written request of a person who provides public work labor or material and when required by Subsection (c) (relating to requiring information requested to be provided within a reasonable time but not later than the 10th day after the receipt of the written request for the information), to provide to the person the name and last known address of the governmental entity or nongovernmental leasehold tenant with whom the prime contractor contracted for the public work.

(b) Requires a subcontractor, on the written request of a governmental entity, a nongovernmental leasehold tenant with whom the prime contractor contracted, the prime contractor, a surety on a bond that covers the public work contract, or a person providing work under the subcontract and when required by Subsection (c), to provide certain information to the person requesting the information.

SECTION 4. Amends Section 2253.071(a), Government Code, as follows:

(a) Provides that the proceeds of a public work contract are not payable, until all costs of completion of the contract work are paid by the contractor or the contractor's surety, to a contractor who furnishes a bond required by Chapter 2253 (Public Work Performance and Payment Bonds) if the contractor's right to proceed with performance of the contract is lawfully terminated by the awarding governmental entity or nongovernmental entity leasing public property from the governmental entity because of the contractor's default, rather than lawfully terminated by the awarding governmental entity because of the contractor's default.

SECTION 5. Provides that the changes in law made by this Act apply only to a public work contract or construction project for which a governmental entity or a nongovernmental entity leasing public property from the governmental entity first advertises or otherwise requests bids, proposals, offers, or qualifications, or makes a similar solicitation, on or after the effective date of this Act.

SECTION 6. Effective date: September 1, 2021.