

BILL ANALYSIS

C.S.H.B. 2237
By: Burrows
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been noted that certain provisions under Texas' current mechanic's, contractor's, and materialman's lien statutes may lead to confusion when securing lien rights. Under those statutes, certain notice requirements and deadlines can lead to confusion and some difficulties when securing liens and understanding lien rights. C.S.H.B. 2237 seeks to streamline the current Texas lien statutes, remove redundant provisions, address various ambiguities, and provide for specific statutory forms for notice.

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. 2237 amends the Property Code to revise and update certain provisions relating to mechanic's, contractor's, or materialman's liens. Accordingly, the bill does the following with respect to certain terms defined for purposes of those provisions:

- updates the definitions of "retainage," "subcontractor," and "work";
- provides that an "improvement" includes the following:
 - a house, building, structure, parking structure, appurtenance, pool, utility, railroad, well, storage facility, land reclaimed from overflow, and other fixtures or modifications to real property, all of which are in addition to the abutting sidewalks, streets, and utilities in or on those sidewalks and streets;
 - machinery or apparatuses used for raising water or for supplying or storing water for stock, domestic use, or irrigation;
 - work, as described by the bill, wherein a person under a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor provides labor, plant material, or other supplies for the installation of landscaping for an improvement; and
 - a design, drawing, plan, plat, survey, or specification provided by a licensed architect, engineer, or surveyor;
- provides that "labor" includes a professional service used in the direct preparation for the work of a design, drawing, plan, plat, survey, or specification;
- provides that "material" includes all or part of the material, machinery, fixtures, or tools that are specially fabricated for an improvement; and
- with respect to the definition of "residence," provides that the term:
 - includes the real property and improvements for an applicable residence; and
 - is applicable to a multiunit structure used for residential purposes in which title to the

individual units is transferred to the owners under a condominium or cooperative system.

The bill defines "purported original contractor" to mean an original contractor who can effectively control the owner or is effectively controlled by the owner through common ownership of voting stock or ownership interests, interlocking directorships, common management, or otherwise, or who was engaged by the owner for the construction or repair of improvements without a good faith intention of the parties that the purported original contractor was to perform under the contract. The bill clarifies that, for purposes of this definition, the term "owner" does not include a person who has or claims a security interest only.

C.S.H.B. 2237 removes registered mail as an alternative to certified mail as a means of delivering certain notices and copies of affidavits applicable to such liens.

C.S.H.B. 2237 establishes a method for computing the periods for providing requisite notice or taking an applicable required action.

C.S.H.B. 2237, with respect to the provisions entitling certain persons to a lien, revises those provisions to clarify that a person has a lien if the person does the following under a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor:

- furnishes labor or materials for construction or repair of an improvement, as that improvement is defined by the bill;
- specially fabricates material, even if the material is not delivered;
- is a licensed architect, engineer, or surveyor providing services to prepare a design, drawing, plan, plat, survey, or specification;
- provides labor, plant material, or other supplies for the installation of landscaping for an improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation; or
- performs labor as part of, or furnishes labor or materials for, the demolition of an improvement on real property.

C.S.H.B. 2237 establishes that a lien secures payment for the labor done or materials furnished for the design, survey, or demolition.

C.S.H.B. 2237 establishes that a person who furnishes labor or materials under a direct contractual relationship with a purported original contractor, as defined by the bill, is considered to be an original contractor for purposes of perfecting a mechanic's lien.

C.S.H.B. 2237 repeals provisions authorizing a claimant to make written demand for payment of the claim to an owner authorized to withhold funds.

C.S.H.B. 2237 does the following:

- requires an original contractor and a subcontractor claiming a lien to file an affidavit with the county clerk in the county where the improvements are located;
- establishes the dates by which an applicable affidavit must be filed for residential construction projects and projects other than those projects;

C.S.H.B. 2237 specifies that, with respect to the authority to withhold funds for the benefit of claimants on the receipt of the applicable requisite notice, such an owner may immediately withhold from payments to the original contractor an amount necessary to pay the claim for which the owner receives notice.

C.S.H.B. 2237 revises provisions relating to the procedure for perfecting an applicable lien by doing the following:

- requiring a subcontractor claimant, for all unpaid labor or materials provided or specially fabricated during a month, to send a notice of claim for unpaid labor or materials to the owner or reputed owner and the original contractor, setting the deadline for sending the

notice, and setting out the required form and contents of the notice; and

- requiring a subcontractor claimant whose contract provides for retainage, excluding retainage for the benefit of lien claimants, to give notice of a claim for unpaid retainage to the owner or reputed owner and the original contractor for the lien for unpaid retainage to be valid, setting the deadline for sending the notice, and setting out the required form and contents of the notice.

•

C.S.H.B. 2237 revises statutory provisions requiring the retainage of certain amounts under an original contract for the benefit of lien claimants to instead require funds to be reserved for that benefit. The bill revises the provisions as follows:

- to replace references to such retainage with references to reserved funds;
- to reflect the bill's revised definitions; and
- to clarify accordingly the conditions under which an owner is not liable for certain amounts paid and under which the owner's property is subject to an applicable claim.

C.S.H.B. 2237 revises the contents of an applicable affidavit of completion to reflect the bill's revisions and changes the deadline, which is triggered by the date the affidavit is filed, for sending a copy of the affidavit to the original contractor.

C.S.H.B. 2237 revises provisions relating to the release and foreclosure of an applicable lien by:

- changing the date a suit is required to be brought to foreclose the lien and providing for that period to be extended;
- establishing that, if suit to foreclose a lien is pursued solely to discharge a lien because limitations have expired on bringing the lien foreclosure suit, the lien claimant's rights to pursue a suit to foreclose a lien are not revived;
- changing from 21 to 30 days before the date of a hearing on a motion to remove an invalid or unenforceable lien the date by which the claimant must be notified and from the 21st day after the date the claimant answers to the 30th day after that date the day before which a motion may not be heard; and
- providing the claimant to be allowed expedited discovery regarding information relevant to the grounds for objecting the validity or enforceability of a claim.

C.S.H.B. 2237 revises the methods by which a mechanic's lien of affidavit claiming such a lien may be discharged of record by removing the requirement that a certified copy of an order removing a lien be accompanied by a certificate from the clerk of the court that states that no bond or deposit was filed by the claimant to stay the removal.

C.S.H.B. 2237 revises provisions relating to a bond to pay liens or claims by removing the specification that the bond protects all persons with a claim related to a residential construction project and by revising notice requirements to perfect a claim against such a bond. The bill establishes that a claimant that meets the notice requirements need not file an affidavit claiming a mechanic's lien in order to perfect its claim under the bond.

C.S.H.B. 2237 revises the statement required to be included in the requisite notice to an owner for the purposes of validating a lien on a homestead and revises the disclosure statement required to be delivered to an owner by an original contractor before a residential construction contract can be executed.

C.S.H.B. 2237 revises the methods by which a mechanic's lien of affidavit claiming such a lien may be discharged of record by removing the requirement that a certified copy of an order removing a lien be accompanied by a certificate from the clerk of the court that states that no bond or deposit was filed by the claimant to stay the removal.

C.S.H.B. 2237 removes the requirement that the waiver and release of a lien or payment of a

bond claim be notarized.

C.S.H.B. 2237 amends the Insurance Code to make conforming changes.

C.S.H.B. 2237 repeals the following provisions of the Property Code:

- Section 53.003(a);
- Section 53.026(b);
- Section 53.053;
- Sections 53.056(b), (c), (d), (e), and (f);
- Sections 53.057(b), (b-1), (c), (d), (e), and (g);
- Section 53.058;
- Sections 53.081(b), (c), and (d);
- Section 53.083;
- Section 53.158(b); and
- Sections 53.252 and 53.253.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2237 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 updates multiple provisions that were included in the original to apply certain drafting conventions, technical corrections, and clarifications, including updates to the original's provision setting out and revising definitions and updates to the original's repealer.

The substitute includes the following, which were not included in the original:

- provisions authorizing a subcontractor claimant to give to the original contractor a written notice of an unpaid labor or materials invoice that is past due and establishing that such a notice is not required for a lien to be valid; and
- a specification that an owner, who is authorized by the original to withhold certain amounts from a payment to the original contractor, may immediately withhold that amount from a payment.