

BILL ANALYSIS

C.S.H.B. 3422
By: Morrison
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It was reported that in the aftermath of Hurricane Harvey, some contractors pressured disaster survivors to provide up-front payments for contracting work that was never performed. Similar stories have begun to emerge following Winter Storm Uri, which struck Texas in February of this year. C.S.H.B. 3422 seeks to protect against these scams by providing civil penalties for certain violations of state contracting regulations by a disaster remediation contractor.

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. 3422 amends the Business & Commerce Code to except a payment held in escrow from the prohibition against a disaster remediation contractor requiring a person to make a full or partial payment under a contract before the contractor begins work under a contract for the performance of disaster remediation services on property owned or leased by the person.

C.S.H.B. 3422 makes a disaster remediation contractor liable to the state for a maximum civil penalty of \$500 if the contractor, without the intent to defraud the person contracting for disaster remediation services, violates that prohibition or the prohibition against the contractor requiring that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered. The maximum penalty for that violation increases to \$2,000 per violation if the violation was committed with the intent to defraud the person contracting for the services. The bill authorizes the attorney general to bring an action in the name of the state against a disaster remediation contractor who commits a violation for recovery of the civil penalty. Such an action may be brought in a district court in Travis County or in a county in which any part of the violation occurs.

C.S.H.B. 3422 clarifies that the treatment of improvements to real property that constitutes disaster remediation applies with respect to existing improvements. The bill excludes a 501(c)(3) tax-exempt organization from the definition of a disaster remediation contractor.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3422 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 original and the substitute each prescribe penalties for a disaster remediation contractor who violates the prohibition against requiring a person to make a full or partial payment under a contract for disaster remediation services before the contractor begins work or the prohibition against requiring that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered. However, whereas the original made such a violation a criminal offense, the substitute instead makes the violation a civil offense. Accordingly, the substitute omits provisions of the original establishing a defense to prosecution and includes additional provisions not in the original regarding the amount of the civil penalties due and an action to recover a penalty.