

SENATE AMENDMENTS

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A BILL TO BE ENTITLED

AN ACT

relating to mechanic's, contractor's, or materialman's liens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3503.051(3), Insurance Code, is amended to read as follows:

(3) "Notice of claim" means a written notification by a claimant who makes a claim for payment from the surety company. The term does not include a routine statutory notice required by Section 53.056 or [~~53.056(b)~~], 53.057, [~~53.058, 53.252(b), or 53.253~~], Property Code, or Section 2253.047, Government Code.

SECTION 2. Section 53.001, Property Code, is amended by amending Subdivisions (2), (3), (4), (8), (11), (13), and (14) and adding Subdivision (7-a) to read as follows:

(2) "Improvement" includes:

(A) a house, building, structure, parking structure, physical appurtenance, pool, utility, railroad, well, storage facility, abutting sidewalks and streets, [and] utilities in or on those sidewalks and streets, land reclaimed from overflow, and other fixtures or modifications to real property;

(B) clearing, grubbing, draining, or fencing of land;

(C) machinery or apparatuses used for raising water or for supplying or storing water for stock, domestic use, or irrigation; [wells, cisterns, tanks, reservoirs, or artificial

1 ~~lakes or pools made for supplying or storing water];~~

2 (D) work described by Section 53.021(4) [~~pumps,~~
3 ~~siphons, and windmills or other machinery or apparatuses used for~~
4 ~~raising water for stock, domestic use, or irrigation]; and~~

5 (E) a design, drawing, plan, plat, survey, or
6 specification provided by a licensed architect, engineer, or
7 surveyor [~~planting orchard trees, grubbing out orchards and~~
8 ~~replacing trees, and pruning of orchard trees].~~

9 (3) "Labor" means:

10 (A) labor used in the direct performance
11 [~~prosecution~~] of the work; or

12 (B) a professional service used in the direct
13 preparation for the work of a design, drawing, plan, plat, survey,
14 or specification.

15 (4) "Material" means all or part of:

16 (A) the material, machinery, fixtures, or tools:

17 (i) incorporated into the work; i

18 (ii) used [~~, consumed~~] in the direct
19 performance [~~prosecution~~] of the work; i

20 (iii) specially fabricated for an
21 improvement; [7] or

22 (iv) ordered and delivered for
23 incorporation or use [~~consumption~~];

24 (B) rent at a reasonable rate and actual running
25 repairs at a reasonable cost for construction equipment used or
26 reasonably required and delivered for use in the direct performance
27 [~~prosecution~~] of the work at the site of the construction or repair;

1 or

2 (C) power, water, fuel, and lubricants consumed
3 or ordered and delivered for consumption in the direct performance
4 ~~[prosecution]~~ of the work.

5 (7-a) "Purported original contractor" means an
6 original contractor who can effectively control the owner or is
7 effectively controlled by the owner through common ownership of
8 voting stock or ownership interests, interlocking directorships,
9 common management, or otherwise, or who was engaged by the owner for
10 the construction or repair of improvements without a good faith
11 intention of the parties that the purported original contractor was
12 to perform under the contract. For purposes of this subdivision,
13 the term "owner" does not include a person who has or claims a
14 security interest only.

15 (8) "Residence" means the real property and
16 improvements for a single-family house, duplex, triplex, or
17 quadruplex or a unit in a multiunit structure used for residential
18 purposes in which title to the individual units is transferred to
19 the owners under a condominium or cooperative system that is:

20 (A) owned by one or more adult persons; and

21 (B) used or intended to be used as a dwelling by
22 one of the owners.

23 (11) "Retainage" means an amount representing part of
24 a contract payment that is not required to be paid to the claimant
25 within the month following the month in which labor is performed,
26 material is furnished, or specially fabricated material is
27 delivered. ~~[The term does not include retainage under Subchapter~~

1 E.]

2 (13) "Subcontractor" means a person who labors or has
3 furnished labor or materials to fulfill an obligation to an
4 original contractor or to a subcontractor of any tier to perform all
5 or part of the work required by an original contract.

6 (14) "Work" means any part of construction or repair
7 of an improvement performed under an original contract.

8 SECTION 3. Section 53.003, Property Code, is amended by
9 amending Subsections (b) and (c) and adding Subsection (e) to read
10 as follows:

11 (b) Any notice or other written communication required by
12 this chapter may be delivered:

13 (1) in person to the party entitled to the notice or to
14 that party's agent;

15 (2) by certified mail; or

16 (3) by any other form of traceable, private delivery
17 or mailing service that can confirm proof of receipt~~[, regardless~~
18 ~~of the manner prescribed by law].~~

19 (c) If notice is sent by [~~registered or~~] certified mail,
20 deposit or mailing of the notice in the United States mail in the
21 form required constitutes compliance with the notice requirement.
22 This subsection does not apply if the law requires receipt of the
23 notice by the person to whom it is directed.

24 (e) In computing the period of days in which to provide a
25 notice or to take any action required under this chapter, if the
26 last day of the period is a Saturday, Sunday, or legal holiday, the
27 period is extended to include the next day that is not a Saturday,

1 Sunday, or legal holiday.

2 SECTION 4. Section 53.021, Property Code, is amended to
3 read as follows:

4 Sec. 53.021. PERSONS ENTITLED TO LIEN. [~~a~~] A person has
5 a lien if[+]

6 [~~1~~] the person, under a contract with the owner or
7 the owner's agent, trustee, receiver, contractor, or
8 subcontractor:

9 (1) labors[~~, specially fabricates material,~~] or
10 furnishes labor or materials for construction or repair of an
11 improvement; [~~in this state of:~~

12 [~~(A) a house, building, or improvement,~~

13 [~~(B) a levee or embankment to be erected for the~~
14 ~~reclamation of overflow land along a river or creek; or~~

15 [~~(C) a railroad; and]~~

16 (2) [~~the person labors, specially fabricates the~~
17 ~~material, or furnishes the labor or materials under or by virtue of~~
18 ~~a contract with the owner or the owner's agent, trustee, receiver,~~
19 ~~contractor, or subcontractor.~~

20 [~~b~~] A person who specially fabricates material, [has a
21 lien] even if the material is not delivered;

22 (3) is a licensed [~~+~~

23 [~~c~~] architect, engineer, or surveyor providing
24 services to prepare a design, drawing, [~~who prepares a]~~ plan, [~~or]~~
25 plat, survey, or specification;

26 (4) [~~under or by virtue of a written contract with the~~
27 ~~owner or the owner's agent, trustee, or receiver in connection with~~

1 ~~the actual or proposed design, construction, or repair of~~
2 ~~improvements on real property or the location of the boundaries of~~
3 ~~real property has a lien on the property.~~

4 ~~[(d) A person who]~~ provides labor, plant material, or other
5 supplies for the installation of landscaping for an ~~[a house,~~
6 ~~building, or]~~ improvement, including the construction of a
7 retention pond, retaining wall, berm, irrigation system, fountain,
8 or other similar installation; or

9 (5) ~~[, under or by virtue of a written contract with~~
10 ~~the owner or the owner's agent, contractor, subcontractor, trustee,~~
11 ~~or receiver has a lien on the property.~~

12 ~~[(e) A person who]~~ performs labor as part of, or ~~[who]~~
13 furnishes labor or materials for, the demolition of an improvement
14 ~~[a structure]~~ on real property ~~[under or by virtue of a written~~
15 ~~contract with the owner of the property or the owner's agent,~~
16 ~~trustee, receiver, contractor, or subcontractor has a lien on the~~
17 ~~property].~~

18 SECTION 5. Sections 53.022(a), (c), and (d), Property Code,
19 are amended to read as follows:

20 (a) The lien extends to the ~~[house, building, fixtures, or]~~
21 improvements ~~[, the land reclaimed from overflow, or the railroad~~
22 ~~and all of its properties,]~~ and to each lot of land necessarily
23 connected ~~[or reclaimed].~~

24 (c) A lien against land in a city, town, or village extends
25 to each lot on which the ~~[house, building, or]~~ improvement is
26 situated or on which the labor was performed.

27 (d) A lien against land not in a city, town, or village

1 extends to not more than 50 acres on which the [~~house, building, or~~
2 improvement is situated or on which the labor was performed.

3 SECTION 6. Section 53.023, Property Code, is amended to
4 read as follows:

5 Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures
6 payment for:

7 (1) the labor done or material furnished for the
8 construction, [~~or~~] repair, design, survey, or demolition; or

9 (2) the specially fabricated material, even if the
10 material has not been delivered or incorporated into the
11 construction or repair, less its fair salvage value [~~, or~~

12 ~~[(3) the preparation of a plan or plat by an architect,~~
13 ~~engineer, or surveyor in accordance with Section 53.021(c)].~~

14 SECTION 7. Section 53.026(a), Property Code, is amended to
15 read as follows:

16 (a) A person who labors [~~, specially fabricates materials,~~
17 or furnishes labor or materials under a direct contractual
18 relationship with a purported original contractor [~~another person~~
19 is considered to be [~~in direct contractual relationship with the~~
20 ~~owner and has a lien as~~] an original contractor for purposes of
21 perfecting a mechanic's lien [~~, if:~~

22 ~~[(1) the owner contracted with the other person for~~
23 ~~the construction or repair of a house, building, or improvements~~
24 ~~and the owner can effectively control that person through ownership~~
25 ~~of voting stock, interlocking directorships, or otherwise,~~

26 ~~[(2) the owner contracted with the other person for~~
27 ~~the construction or repair of a house, building, or improvements~~

1 ~~and that other person can effectively control the owner through~~
2 ~~ownership of voting stock, interlocking directorships, or~~
3 ~~otherwise, or~~

4 ~~[(3) the owner contracted with the other person for~~
5 ~~the construction or repair of a house, building, or improvements~~
6 ~~and the contract was made without good faith intention of the~~
7 ~~parties that the other person was to perform the contract].~~

8 SECTION 8. Section 53.052, Property Code, is amended to
9 read as follows:

10 Sec. 53.052. FILING OF AFFIDAVIT. (a) An original
11 contractor claiming the lien must file an affidavit with the county
12 clerk:

13 (1) for projects other than residential construction
14 projects, not later than the 15th day of the fourth month after the
15 month in which the original contractor's work was completed,
16 terminated, or abandoned; or

17 (2) for residential construction projects, not later
18 than the 15th day of the third month after the month in which the
19 original contractor's work was completed, terminated, or
20 abandoned.

21 (b) Except as provided by Subsection (c) or (d) [(b)], a
22 claimant other than an original contractor [the person] claiming
23 the lien must file an affidavit with the county clerk [of the county
24 in which the property is located or into which the railroad extends]
25 not later than the 15th day of the fourth [calendar] month after the
26 later of:

27 (1) the month the claimant last provided labor or

1 materials; or

2 (2) the month the claimant would normally have been
3 required to deliver the last of specially fabricated materials that
4 have not been actually delivered [~~day on which the indebtedness~~
5 ~~accrues~~].

6 (c) [(b)] A claimant other than an original contractor
7 [person] claiming a lien arising from a residential construction
8 project must file an affidavit with the county clerk [~~of the county~~
9 ~~in which the property is located~~] not later than the 15th day of the
10 third [~~calendar~~] month after the later of:

11 (1) the month the claimant last provided labor or
12 materials; or

13 (2) the month the claimant would normally have been
14 required to deliver the last of specially fabricated materials that
15 have not been actually delivered.

16 (d) A claimant other than an original contractor claiming a
17 lien for retainage must file an affidavit with the county clerk not
18 later than the 15th day of the third month after the month in which
19 the original contract under which the claimant performed was
20 completed, terminated, or abandoned.

21 (e) An affidavit under this chapter must be filed in the
22 county where the improvements are located [~~day on which the~~
23 ~~indebtedness accrues~~].

24 [(e)] The county clerk shall record the affidavit in records
25 kept for that purpose and shall index and cross-index the affidavit
26 in the names of the claimant, the original contractor, and the
27 owner. Failure of the county clerk to properly record or index a

1 filed affidavit does not invalidate the lien.

2 SECTION 9. Section 53.055(a), Property Code, is amended to
3 read as follows:

4 (a) A person who files an affidavit must send a copy of the
5 affidavit [~~by registered or certified mail~~] to the owner or reputed
6 owner at the owner's last known business or residence address not
7 later than the fifth day after the date the affidavit is filed with
8 the county clerk.

9 SECTION 10. The heading to Section 53.056, Property Code,
10 is amended to read as follows:

11 Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER AND [~~OR~~]
12 ORIGINAL CONTRACTOR.

13 SECTION 11. Section 53.056, Property Code, is amended by
14 amending Subsection (a) and adding Subsections (a-1), (a-2), and
15 (a-3) to read as follows:

16 (a) Except as provided by Section 53.057 [~~Subchapter K~~], a
17 claimant other than an original contractor must give the notice
18 prescribed by Subsections (a-1) and (a-2) [~~this section~~] for the
19 lien to be valid.

20 (a-1) For all unpaid labor or materials provided, the
21 claimant must send a notice of claim for unpaid labor or materials
22 to the owner or reputed owner and the original contractor. The
23 notice must be sent:

24 (1) for projects other than residential construction
25 projects, not later than the 15th day of the third month after the
26 month during which:

27 (A) the labor or materials were provided; or

1 (B) the undelivered specially fabricated
2 materials would normally have been delivered; or

3 (2) for residential construction projects, not later
4 than the 15th day of the second month after the month during which:

5 (A) the labor or materials were provided; or

6 (B) the undelivered specially fabricated
7 materials would normally have been delivered.

8 (a-2) The notice may include an invoice or billing statement
9 and must be in substantially the following form:

10 "NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

11 "WARNING: This notice is provided to preserve lien rights.

12 "Owner's property may be subject to a lien if sufficient funds are
13 not withheld from future payments to the original contractor to
14 cover this debt.

15 "Date: _____

16 "Project description and/or address: _____

17 "Claimant's name: _____

18 "Type of labor or materials provided: _____

19 "Original contractor's name: _____

20 "Party with whom claimant contracted if different from
21 original contractor: _____

22 "Claim amount: _____

23 "_____ (Claimant's contact person)

24 "_____ (Claimant's address)"

25 (a-3) A claimant may give to the original contractor a
26 written notice of an unpaid labor or materials invoice that is past
27 due. A notice under this subsection is not required for a lien to be

1 valid.

2 SECTION 12. The heading to Section 53.057, Property Code,
3 is amended to read as follows:

4 Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE OF CLAIM FOR
5 UNPAID [~~CONTRACTUAL~~] RETAINAGE [~~CLAIM~~].

6 SECTION 13. Section 53.057, Property Code, is amended by
7 amending Subsections (a) and (f) and adding Subsections (a-1) and
8 (a-2) to read as follows:

9 (a) To the extent that a claim for unpaid retainage is not
10 included wholly or partly in a notice provided under Section
11 53.056, a claimant other than an original contractor whose contract
12 provides for retainage must [~~A claimant may~~] give notice under this
13 section for a lien for unpaid retainage to be valid [~~instead of or~~
14 ~~in addition to notice under Section 53.056 or 53.252 if the claimant~~
15 ~~is to labor, furnish labor or materials, or specially fabricate~~
16 ~~materials, or has labored, furnished labor or materials, or~~
17 ~~specially fabricated materials, under an agreement with an original~~
18 ~~contractor or a subcontractor providing for retainage)].~~

19 (a-1) The claimant must send the notice of claim for unpaid
20 retainage to the owner or reputed owner and the original contractor
21 not later than the earlier of:

22 (1) the 30th day after the date the claimant's contract
23 is completed, terminated, or abandoned; or

24 (2) the 30th day after the date the original contract
25 is terminated or abandoned.

26 (a-2) The notice may include an invoice or billing statement
27 and must be in substantially the following form:

"NOTICE OF CLAIM FOR UNPAID RETAINAGE

"WARNING: This notice is provided to preserve lien rights.

"Owner's property may be subject to a lien if sufficient funds are
not withheld from future payments to the original contractor to
cover this debt.

"Date: _____

"Project description and/or address: _____

"Claimant's name: _____

"Type of labor or materials provided: _____

"Original contractor's name: _____

"Party with whom claimant contracted if different from
original contractor: _____

"Total retainage unpaid: _____

"_____ (Claimant's contact person)

"_____ (Claimant's address)"

(f) A claimant has a lien on, and the owner is personally
liable to the claimant for, the reserved [~~retained~~] funds under
Subchapter E if the claimant:

(1) gives notice in accordance with this section and:

(A) complies with Subchapter E; or

(B) files an affidavit claiming a lien not later
than [~~the earliest of:~~

[~~(i)~~] the date required for filing an
affidavit under the applicable provision of Section 53.052 [↗

[~~(ii) the 40th day after the date stated in
an affidavit of completion as the date of completion of the work
under the original contract, if the owner sent the claimant notice~~

1 ~~of an affidavit of completion in the time and manner required,~~
2 ~~[(iii) the 40th day after the date of~~
3 ~~termination or abandonment of the original contract, if the owner~~
4 ~~sent the claimant a notice of such termination or abandonment in the~~
5 ~~time and manner required; or~~
6 ~~[(iv) the 30th day after the date the owner~~
7 ~~sent to the claimant to the claimant's address provided in the~~
8 ~~notice for contractual retainage, as required under Subsection (c),~~
9 ~~a written notice of demand for the claimant to file the affidavit~~
10 ~~claiming a lien]; and~~

11 (2) gives the notice of the filed affidavit as
12 required by Section 53.055.

13 SECTION 14. Section 53.081(a), Property Code, is amended to
14 read as follows:

15 (a) If an owner receives notice under Section 53.056 or [7]
16 53.057, [~~53.058, 53.252, or 53.253,~~] the owner may immediately
17 withhold from payments to the original contractor an amount
18 necessary to pay the claim for which the owner [~~he~~] receives notice.
19 The withholding may be in addition to any reserve funds.

20 SECTION 15. Section 53.082, Property Code, is amended to
21 read as follows:

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

27 (1) the time for filing the affidavit of mechanic's

1 lien has passed; or

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

4 SECTION 16. Section 53.084, Property Code, is amended to
5 read as follows:

6 Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount
7 the owner fails to reserve [~~required to be retained~~] under
8 Subchapter E, the owner is not liable for any amount paid to the
9 original contractor before the owner is authorized to withhold
10 funds under this subchapter.

11 (b) If the owner has received a notice [~~the notices~~]
12 required by Section 53.056 or 53.057 [~~Subchapter C or K~~], if the
13 lien has been secured, and if the claim has been reduced to final
14 judgment, the owner is liable and the owner's property is subject to
15 a claim for any money paid to the original contractor after the
16 owner was authorized to withhold funds under this subchapter. The
17 owner is liable for that amount in addition to any amount for which
18 the owner [~~he~~] is liable under Subchapter E.

19 SECTION 17. The heading to Subchapter E, Chapter 53,
20 Property Code, is amended to read as follows:

21 SUBCHAPTER E. FUNDS RESERVED [~~REQUIRED RETAINAGE~~] FOR BENEFIT OF
22 LIEN CLAIMANTS

23 SECTION 18. Sections 53.101, 53.102, 53.103, 53.104, and
24 53.105, Property Code, are amended to read as follows:

25 Sec. 53.101. FUNDS REQUIRED TO BE RESERVED [~~RETAINAGE~~].

26 (a) During the progress of work under an original contract for
27 which a mechanic's lien may be claimed and for 30 days after the

1 work under the contract is completed, the owner shall reserve
2 [~~retain~~]:

3 (1) 10 percent of the contract price of the work to the
4 owner; or

5 (2) 10 percent of the value of the work, measured by
6 the proportion that the work done bears to the work to be done,
7 using the contract price or, if there is no contract price, using
8 the reasonable value of the completed work.

9 (b) In this section, "owner" includes the owner's agent,
10 trustee, or receiver.

11 Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS [~~RETAINAGE~~].
12 The reserved [~~retained~~] funds secure the payment of artisans and
13 mechanics who perform labor or service and the payment of other
14 persons who furnish material, material and labor, or specially
15 fabricated material for any contractor, subcontractor, agent, or
16 receiver in the performance of the work.

17 Sec. 53.103. LIEN ON RESERVED [~~RETAINED~~] FUNDS. A claimant
18 has a lien on the reserved [~~retained~~] funds if the claimant:

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

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

24 (A) the work is completed;

25 (B) the original contract is terminated; or

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

1 Sec. 53.104. PREFERENCES. (a) Individual artisans and
2 mechanics are entitled to a preference to the reserved [~~retained~~]
3 funds and shall share proportionately to the extent of their claims
4 for wages and fringe benefits earned.

5 (b) After payment of artisans and mechanics who are entitled
6 to a preference under Subsection (a), other participating claimants
7 share proportionately in the balance of the reserved [~~retained~~]
8 funds.

9 Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RESERVE FUNDS
10 [~~RETAIN~~]. (a) If the owner fails or refuses to comply with this
11 subchapter, the claimants complying with Subchapter C or this
12 subchapter have a lien, at least to the extent of the amount that
13 should have been reserved [~~retained~~] from the original contract
14 under which they are claiming, against the improvements [~~house,~~
15 ~~building, structure, fixture, or improvement~~] and all of its
16 properties and against the lot or lots of land necessarily
17 connected.

18 (b) The claimants share the lien proportionately in
19 accordance with the preference provided by Section 53.104.

20 SECTION 19. Sections 53.106(a), (b), and (d), Property
21 Code, are amended to read as follows:

22 (a) An owner may file with the county clerk of the county in
23 which the property is located an affidavit of completion. The
24 affidavit must contain:

- 25 (1) the name and address of the owner;
- 26 (2) the name and address of the original contractor;
- 27 (3) a description, legally sufficient for

1 identification, of the real property on which the improvements are
2 located;

3 (4) a description of the improvements furnished under
4 the original contract;

5 (5) a statement that the improvements under the
6 original contract have been completed and the date of completion;
7 and

8 (6) a conspicuous statement that a claimant may not
9 have a lien on retained funds unless the claimant files an affidavit
10 claiming a lien in the time and manner required by this chapter [~~not~~
11 ~~later than the 40th day after the date the work under the original~~
12 ~~contract is completed~~].

13 (b) A copy of the affidavit must be sent [~~by certified or~~
14 ~~registered mail~~] to the original contractor [~~not later than the~~
15 ~~date the affidavit is filed~~] and to each claimant who sends a notice
16 [~~of lien liability~~] to the owner under Section 53.056 or [~~7~~] 53.057
17 [~~, 53.058, 53.252, or 53.253~~] not later than the third day after the
18 date the affidavit is filed or the 10th day after the date the owner
19 receives the notice of lien liability, whichever is later.

20 (d) An [~~Except as provided by this subsection, an~~] affidavit
21 filed under this section [~~on or before the 10th day after the date~~
22 ~~of completion of the improvements~~] is prima facie evidence of the
23 date the work under the original contract is completed for purposes
24 of this chapter [~~subchapter and Section 53.057~~]. If the affidavit
25 is filed after the 10th day after the date of completion, the date
26 of completion for purposes of this subchapter [~~and Section 53.057~~]
27 is the date the affidavit is filed. This subsection does not apply

1 to a person to whom the affidavit was not sent as required by this
2 section.

3 SECTION 20. Sections 53.107(a) and (b), Property Code, are
4 amended to read as follows:

5 (a) Not later than the 10th day after the date an original
6 contract is terminated or the original contractor abandons
7 performance under the original contract, the owner shall give
8 notice to each subcontractor who, before the date of termination or
9 abandonment, has:

10 (1) given notice to the owner as provided by Section
11 53.056 or [7] 53.057 [~~7~~ ~~or~~ ~~53.058~~]; or

12 (2) sent to the owner [~~by certified or registered~~
13 ~~mail~~] a written request for notice of termination or abandonment.

14 (b) The notice must contain:

15 (1) the name and address of the owner;

16 (2) the name and address of the original contractor;

17 (3) a description, legally sufficient for
18 identification, of the real property on which the improvements are
19 located;

20 (4) a general description of the improvements agreed
21 to be furnished under the original contract;

22 (5) a statement that the original contract has been
23 terminated or that performance under the contract has been
24 abandoned;

25 (6) the date of the termination or abandonment; and

26 (7) a conspicuous statement that a claimant may not
27 have a lien on the retained funds unless the claimant files an

1 affidavit claiming a lien in the time and manner required by this
2 chapter [~~not later than the 40th day after the date of the~~
3 ~~termination or abandonment~~].

4 SECTION 21. Section 53.155, Property Code, is amended to
5 read as follows:

6 Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house,~~
7 ~~building,~~] improvement [~~, or any piece of railroad property~~] is
8 sold separately from the land, the officer making the sale shall
9 provide [~~place~~] the purchaser [~~in possession. The purchaser is~~
10 ~~entitled to~~] a reasonable time after the date of purchase within
11 which to remove and take possession of the purchased improvement
12 [~~property~~].

13 SECTION 22. Section 53.157, Property Code, is amended to
14 read as follows:

15 Sec. 53.157. DISCHARGE OF LIEN. An [~~A mechanic's lien or~~]
16 affidavit claiming a mechanic's lien filed under Section 53.052 may
17 be discharged of record by:

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

20 (2) failing to institute suit to foreclose the lien in
21 the county in which the improvement [~~property~~] is located within
22 the period prescribed by Section 53.158, 53.175, or 53.208;

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

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

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

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

8 SECTION 23. Section 53.158, Property Code, is amended by
9 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
10 read as follows:

11 (a) Except as provided by Subsection (a-2) [~~(b)~~], suit must
12 be brought to foreclose the lien not later than the first
13 anniversary of [~~within two years after~~] the last day a claimant may
14 file the lien affidavit under Section 53.052 [~~or within one year~~
15 ~~after completion, termination, or abandonment of the work under the~~
16 ~~original contract under which the lien is claimed, whichever is~~
17 ~~later~~].

18 (a-1) Notwithstanding Section 16.069, Civil Practice and
19 Remedies Code, or any other law, if suit is pursued solely to
20 discharge a lien because limitations have expired on bringing a
21 lien foreclosure suit, the lien claimant's rights to pursue a suit
22 to foreclose a lien are not revived.

23 (a-2) The limitations period established under Subsection
24 (a) may be extended to not later than the second anniversary of the
25 date the claimant filed the lien affidavit under Section 53.052 if,
26 before the expiration of the limitations period established under
27 Subsection (a), the claimant enters into a written agreement with

1 the then-current record owner of the property to extend the
2 limitations period. The agreement must be recorded with the clerk
3 of the same county where the lien was recorded and is considered to
4 be notice of the extension to any subsequent purchaser.

5 SECTION 24. Sections 53.160(b) and (c), Property Code, are
6 amended to read as follows:

7 (b) The grounds for objecting to the validity or
8 enforceability of the claim or lien for purposes of the motion are
9 limited to the following:

10 (1) notice of claim was not timely furnished to the
11 owner or original contractor as required by Section 53.056 or [~~7~~]
12 53.057 [~~, 53.058, 53.252, or 53.253~~];

13 (2) an affidavit claiming a lien failed to comply with
14 Section 53.054 or was not filed as required by Section 53.052;

15 (3) notice of the filed affidavit was not furnished to
16 the owner or original contractor as required by Section 53.055;

17 (4) the deadlines for perfecting a lien claim for
18 retainage under this chapter have expired and the owner complied
19 with the requirements of Section 53.101 and paid the retainage and
20 all other funds owed to the original contractor before:

21 (A) the claimant perfected the lien claim; and

22 (B) the owner received a notice of the claim as
23 required by this chapter;

24 (5) all funds subject to the notice of a claim to the
25 owner and a notice regarding the retainage have been deposited in
26 the registry of the court and the owner has no additional liability
27 to the claimant;

1 (6) when the lien affidavit was filed on homestead
2 property:

3 (A) no contract was executed or filed as required
4 by Section 53.254;

5 (B) the affidavit claiming a lien failed to
6 contain the notice as required by Section 53.254; or

7 (C) the notice of the claim failed to include the
8 statement required by Section 53.254; and

9 (7) the claimant executed a valid and enforceable
10 waiver or release of the claim or lien claimed in the affidavit.

11 (c) The claimant is not required to file a response. The
12 claimant and any other party that has appeared in the proceeding
13 must be notified by at least 30 [~~21~~] days before the date of the
14 hearing on the motion. A motion may not be heard before the 30th
15 [~~21st~~] day after the date the claimant answers or appears in the
16 proceeding. The claimant must be allowed expedited discovery
17 regarding information relevant to the issues listed under
18 Subsection (b).

19 SECTION 25. Section 53.173(c), Property Code, is amended to
20 read as follows:

21 (c) The notice must be served on each obligee by mailing a
22 copy of the notice and the bond to the obligee by certified [~~United~~
23 ~~States~~] mail[~~, return receipt requested,~~] addressed to the claimant
24 at the address stated in the lien affidavit for the obligee.

25 SECTION 26. Section 53.205(a), Property Code, is amended to
26 read as follows:

27 (a) The bond protects all persons with a claim that is:

1 (1) perfected in the manner prescribed for fixing a
2 lien under Subchapter C [~~or, if the claim relates to a residential~~
3 ~~construction project, under Subchapter K~~]; or

4 (2) perfected in the manner prescribed by Section
5 53.206.

6 SECTION 27. Section 53.206, Property Code, is amended to
7 read as follows:

8 Sec. 53.206. PERFECTION OF CLAIM. (a) Except as provided
9 by Subsection (b), to [~~To~~] perfect a claim against a bond in a
10 manner other than that prescribed by Subchapter C [~~or K~~] for fixing
11 a lien, a person must [~~+~~

12 [~~(1)~~] give notice under Sections 53.056 and 53.057 to
13 the original contractor and surety on the bond [~~all applicable~~
14 ~~notices under the appropriate subchapter, and~~

15 [~~(2)~~ ~~give to the surety on the bond, instead of the~~
16 ~~owner, all notices under the appropriate subchapter required to be~~
17 ~~given to the owner~~].

18 (b) To perfect a claim for retainage under this section, a
19 claimant [~~person~~] is not required to [~~+~~

20 [~~(1)~~] give notice to the surety under Section 53.057
21 if [~~, unless~~] the claimant has a direct contractual relationship
22 with the original contractor [~~and the agreed retainage is in excess~~
23 ~~of 10 percent of the contract,~~

24 [~~(2)~~ ~~give notice to the surety under Section 53.058(b)~~
25 ~~or, if the claim relates to a residential construction project,~~
26 ~~under Section 53.253(c), or~~

27 [~~(3)~~ ~~file any affidavit with the county clerk~~].

1 (c) A claimant that provides the notices described by this
2 section is not required to file an affidavit claiming a mechanic's
3 lien to perfect a claim under the bond [~~For the claim to be valid, a~~
4 ~~person must give notice in the time and manner required by this~~
5 ~~section, but the content of the notices need only provide fair~~
6 ~~notice of the amount and the nature of the claim asserted~~].

7 (d) A person satisfies the requirements of this section
8 relating to providing notice to the surety if the person mails the
9 notice by certified [~~or registered~~] mail to the surety:

10 (1) at the address stated on the bond or on an
11 attachment to the bond;

12 (2) at the address on file with the Texas Department of
13 Insurance; or

14 (3) at any other address allowed by law.

15 SECTION 28. Section 53.207(a), Property Code, is amended to
16 read as follows:

17 (a) If the owner receives any of the notices or a lien is
18 fixed under this chapter [~~Subchapter C or K~~], the owner shall mail
19 to the surety on the bond a copy of all notices received.

20 SECTION 29. Section 53.208(a), Property Code, is amended to
21 read as follows:

22 (a) A claimant may sue the principal and surety on the bond
23 either jointly or severally, if the [~~his~~] claim remains unpaid for
24 60 days after the claimant perfects the claim.

25 SECTION 30. Section 53.232, Property Code, is amended to
26 read as follows:

27 Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien

1 claimant must send written notice of his claim by [~~registered or~~
2 certified mail to:

3 (1) the officials of the state, county, town, or
4 municipality whose duty it is to pay the contractor; and

5 (2) the contractor at the contractor's last known
6 business or residence address.

7 SECTION 31. Section 53.238, Property Code, is amended to
8 read as follows:

9 Sec. 53.238. NOTICE OF BOND. The official with whom the
10 bond is filed shall send an exact copy of the bond by [~~registered
11 mail or~~] certified mail, return receipt requested, to all
12 claimants.

13 SECTION 32. The heading to Section 53.254, Property Code,
14 is amended to read as follows:

15 Sec. 53.254. CONTRACTUAL REQUIREMENTS FOR LIEN ON
16 HOMESTEAD.

17 SECTION 33. Section 53.254(g), Property Code, is amended to
18 read as follows:

19 (g) For the lien on a homestead to be valid, the notice
20 required to be given to the owner under Subchapter C [~~Section
21 53.252~~] must include or have attached the following statement:

22 "If a subcontractor or supplier who furnishes materials or
23 performs labor for construction of improvements on your property is
24 not paid, your property may be subject to a lien for the unpaid
25 amount if:

26 (1) after receiving notice of the unpaid claim from
27 the claimant, you fail to withhold payment to your contractor that

1 is sufficient to cover the unpaid claim until the dispute is
2 resolved; or

3 (2) during construction and for 30 days after
4 completion of your contractor's work [~~construction~~], you fail to
5 reserve [~~retain~~] 10 percent of the contract price or 10 percent of
6 the value of the work performed by your contractor.

7 "If you have complied with the law regarding the reservation
8 of 10 percent of the contract price or value of work [~~retainage~~] and
9 you have withheld payment to the contractor sufficient to cover any
10 written notice of claim and have paid that amount, if any, to the
11 claimant, any lien claim filed on your property by a subcontractor
12 or supplier, other than a person who contracted directly with you,
13 will not be a valid lien on your property. In addition, except for
14 the required 10 percent reservation [~~retainage~~], you are not liable
15 to a subcontractor or supplier for any amount paid to your
16 contractor before you received written notice of the claim."

17 SECTION 34. Section 53.255(b), Property Code, is amended to
18 read as follows:

19 (b) The disclosure statement must read substantially
20 similar to the following:

21 "KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You
22 are about to enter into a transaction to build a new home or remodel
23 existing residential property. Texas law requires your contractor
24 to provide you with this brief overview of some of your rights,
25 responsibilities, and risks in this transaction.

26 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may
27 not require you to convey your real property to your contractor as a

1 condition to the agreement for the construction of improvements on
2 your property.

3 "KNOW YOUR CONTRACTOR. Before you enter into your agreement
4 for the construction of improvements to your real property, make
5 sure that you have investigated your contractor. Obtain and verify
6 references from other people who have used the contractor for the
7 type and size of construction project on your property.

8 "GET IT IN WRITING. Make sure that you have a written
9 agreement with your contractor that includes: (1) a description of
10 the work the contractor is to perform; (2) the required or
11 estimated time for completion of the work; (3) the cost of the work
12 or how the cost will be determined; and (4) the procedure and
13 method of payment, including provisions for statutory reservation
14 of funds [~~retainage~~] and conditions for final payment. If your
15 contractor made a promise, warranty, or representation to you
16 concerning the work the contractor is to perform, make sure that
17 promise, warranty, or representation is specified in the written
18 agreement. An oral promise that is not included in the written
19 agreement may not be enforceable under Texas law.

20 "READ BEFORE YOU SIGN. Do not sign any document before you
21 have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN
22 UNTRUE STATEMENT. Take your time in reviewing documents. If you
23 borrow money from a lender to pay for the improvements, you are
24 entitled to have the loan closing documents furnished to you for
25 review at least one business day before the closing. Do not waive
26 this requirement unless a bona fide emergency or another good cause
27 exists, and make sure you understand the documents before you sign

1 them. If you fail to comply with the terms of the documents, you
2 could lose your property. You are entitled to have your own
3 attorney review any documents. If you have any question about the
4 meaning of a document, consult an attorney.

5 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before
6 construction commences, your contractor is required to provide you
7 with a list of the subcontractors and suppliers the contractor
8 intends to use on your project. Your contractor is required to
9 supply updated information on any subcontractors and suppliers
10 added after the list is provided. Your contractor is not required
11 to supply this information if you sign a written waiver of your
12 rights to receive this information.

13 "MONITOR THE WORK. Lenders and governmental authorities may
14 inspect the work in progress from time to time for their own
15 purposes. These inspections are not intended as quality control
16 inspections. Quality control is a matter for you and your
17 contractor. To ensure that your home is being constructed in
18 accordance with your wishes and specifications, you should inspect
19 the work yourself or have your own independent inspector review the
20 work in progress.

21 "MONITOR PAYMENTS. If you use a lender, your lender is
22 required to provide you with a periodic statement showing the money
23 disbursed by the lender from the proceeds of your loan. Each time
24 your contractor requests payment from you or your lender for work
25 performed, your contractor is also required to furnish you with a
26 disbursement statement that lists the name and address of each
27 subcontractor or supplier that the contractor intends to pay from

1 the requested funds. Review these statements and make sure that the
2 money is being properly disbursed.

3 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if
4 a subcontractor or supplier who furnishes labor or materials for
5 the construction of improvements on your property is not paid, you
6 may become liable and your property may be subject to a lien for the
7 unpaid amount, even if you have not contracted directly with the
8 subcontractor or supplier. To avoid liability, you should take the
9 following actions:

10 (1) If you receive a written notice from a
11 subcontractor or supplier, you should withhold payment from your
12 contractor for the amount of the claim stated in the notice until
13 the dispute between your contractor and the subcontractor or
14 supplier is resolved. If your lender is disbursing money directly
15 to your contractor, you should immediately provide a copy of the
16 notice to your lender and instruct the lender to withhold payment in
17 the amount of the claim stated in the notice. If you continue to pay
18 the contractor after receiving the written notice without
19 withholding the amount of the claim, you may be liable and your
20 property may be subject to a lien for the amount you failed to
21 withhold.

22 (2) During construction and for 30 days after final
23 completion, termination, or abandonment of the contract by the
24 contractor, you should reserve [~~withhold~~] or cause your lender to
25 reserve [~~withhold~~] 10 percent of the amount of payments made for the
26 work performed by your contractor. [~~This is sometimes referred to~~
27 ~~as 'statutory retainage.'~~] If you choose not to reserve [~~withhold~~]

1 the 10 percent for at least 30 days after final completion,
2 termination, or abandonment of the contract by the contractor and
3 if a valid claim is timely made by a claimant and your contractor
4 fails to pay the claim, you may be personally liable and your
5 property may be subject to a lien up to the amount that you failed to
6 reserve ~~[withhold]~~.

7 "If a claim is not paid within a certain time period, the
8 claimant is required to file a mechanic's lien affidavit in the real
9 property records in the county where the property is located. A
10 mechanic's lien affidavit is not a lien on your property, but the
11 filing of the affidavit could result in a court imposing a lien on
12 your property if the claimant is successful in litigation to
13 enforce the lien claim.

14 "SOME CLAIMS MAY NOT BE VALID. When you receive a written
15 notice of a claim or when a mechanic's lien affidavit is filed on
16 your property, you should know your legal rights and
17 responsibilities regarding the claim. Not all claims are valid. A
18 notice of a claim by a subcontractor or supplier is required to be
19 sent, and the mechanic's lien affidavit is required to be filed,
20 within strict time periods. The notice and the affidavit must
21 contain certain information. All claimants may not fully comply
22 with the legal requirements to collect on a claim. If you have paid
23 the contractor in full before receiving a notice of a claim and have
24 withheld the 10 percent of the contract price or value of work
25 ~~[fully complied with the law regarding statutory retainage]~~, you
26 may not be liable for that claim. Accordingly, you should consult
27 your attorney when you receive a written notice of a claim to

1 determine the true extent of your liability or potential liability
2 for that claim.

3 "OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you
4 receive a notice of claim, do not release withheld funds without
5 obtaining a signed and notarized release of lien and claim from the
6 claimant. You can also reduce the risk of having a claim filed by a
7 subcontractor or supplier by requiring as a condition of each
8 payment made by you or your lender that your contractor furnish you
9 with an affidavit stating that all bills have been paid. Under
10 Texas law, on final completion of the work and before final payment,
11 the contractor is required to furnish you with an affidavit stating
12 that all bills have been paid. If the contractor discloses any
13 unpaid bill in the affidavit, you should withhold payment in the
14 amount of the unpaid bill until you receive a waiver of lien or
15 release from that subcontractor or supplier.

16 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain
17 a title insurance policy to insure that the title to your property
18 and the existing improvements on your property are free from liens
19 claimed by subcontractors and suppliers. If your policy is issued
20 before the improvements are completed and covers the value of the
21 improvements to be completed, you should obtain, on the completion
22 of the improvements and as a condition of your final payment,
23 a 'completion of improvements' policy endorsement. This
24 endorsement will protect your property from liens claimed by
25 subcontractors and suppliers that may arise from the date the
26 original title policy is issued to the date of the endorsement."

27 SECTION 35. Section 53.281(b), Property Code, is amended to

1 read as follows:

2 (b) A waiver and release is effective to release the owner,
3 the owner's property, the contractor, and the surety on a payment
4 bond from claims and liens only if:

5 (1) the waiver and release substantially complies with
6 one of the forms prescribed by Section 53.284;

7 (2) the waiver and release is signed by the claimant or
8 the claimant's authorized agent [~~and notarized~~]; and

9 (3) in the case of a conditional release, evidence of
10 payment to the claimant exists.

11 SECTION 36. The following provisions of the Property Code
12 are repealed:

13 (1) Section 53.003(a);

14 (2) Section 53.026(b);

15 (3) Section 53.053;

16 (4) Sections 53.056(b), (c), (d), (e), and (f);

17 (5) Sections 53.057(b), (b-1), (c), (d), (e), and (g);

18 (6) Section 53.058;

19 (7) Sections 53.081(b), (c), and (d);

20 (8) Section 53.083;

21 (9) Section 53.158(b); and

22 (10) Sections 53.252 and 53.253.

23 SECTION 37. The changes in law made by this Act apply only
24 to an original contract entered into on or after the effective date
25 of this Act. An original contract entered into before the effective
26 date of this Act is governed by the law as it existed immediately
27 before the effective date of this Act, and that law is continued in

1 effect for that purpose.

2 SECTION 38. This Act takes effect January 1, 2022.

ADOPTED

MAY 22 2021

Latey Law
Secretary of the Senate

By: Johnson

H.B. No. 2237

Substitute the following for ___B. No. _____:

By: Kelly Harmon

C.S. H.B. No. 2237

A BILL TO BE ENTITLED

1 AN ACT

2 relating to mechanic's, contractor's, or materialman's liens.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Section 3503.051(3), Insurance Code, is amended
5 to read as follows:

6 (3) "Notice of claim" means a written notification by
7 a claimant who makes a claim for payment from the surety company.
8 The term does not include a routine statutory notice required by
9 Section 53.056 or [~~53.056(b)~~] 53.057, [~~53.058, 53.252(b), or~~
10 ~~53.253~~] Property Code, or Section 2253.047, Government Code.

11 SECTION 2. Section 53.001, Property Code, is amended by
12 amending Subdivisions (2), (3), (4), (8), (11), (13), and (14) and
13 adding Subdivision (7-a) to read as follows:

14 (2) "Improvement" includes:

15 (A) a house, building, structure, parking
16 structure, physical appurtenance, pool, utility, railroad, well,
17 storage facility, abutting sidewalks and streets, [and] utilities
18 in or on those sidewalks and streets, land reclaimed from overflow,
19 and other fixtures or modifications to real property;

20 (B) clearing, grubbing, draining, or fencing of
21 land;

22 (C) machinery or apparatuses used for raising
23 water or for supplying or storing water for stock, domestic use, or
24 irrigation [~~wells, cisterns, tanks, reservoirs, or artificial~~

1 ~~lakes or pools made for supplying or storing water];~~

2 (D) work described by Section 53.021(4) [~~pumps,~~
3 ~~siphons, and windmills or other machinery or apparatuses used for~~
4 ~~raising water for stock, domestic use, or irrigation]; and~~

5 (E) a design, drawing, plan, plat, survey, or
6 specification provided by a licensed architect, engineer, or
7 surveyor [~~planting orchard trees, grubbing out orchards and~~
8 ~~replacing trees, and pruning of orchard trees].~~

9 (3) "Labor" means:

10 (A) labor used in the direct performance
11 [~~prosecution~~] of the work; or

12 (B) a professional service used in the direct
13 preparation for the work of a design, drawing, plan, plat, survey,
14 or specification.

15 (4) "Material" means all or part of:

16 (A) the material, machinery, fixtures, or tools:

17 (i) incorporated into the work;

18 (ii) used [~~consumed~~] in the direct
19 performance [~~prosecution~~] of the work;

20 (iii) specially fabricated for an
21 improvement; [7] or

22 (iv) ordered and delivered for
23 incorporation or use [~~consumption~~];

24 (B) rent at a reasonable rate and actual running
25 repairs at a reasonable cost for construction equipment used or
26 reasonably required and delivered for use in the direct performance
27 [~~prosecution~~] of the work at the site of the construction or repair;

1 or

2 (C) power, water, fuel, and lubricants consumed
3 or ordered and delivered for consumption in the direct performance
4 [~~prosecution~~] of the work.

5 (7-a) "Purported original contractor" means an
6 original contractor who can effectively control the owner or is
7 effectively controlled by the owner through common ownership of
8 voting stock or ownership interests, interlocking directorships,
9 common management, or otherwise, or who was engaged by the owner for
10 the construction or repair of improvements without a good faith
11 intention of the parties that the purported original contractor was
12 to perform under the contract. For purposes of this subdivision,
13 the term "owner" does not include a person who has or claims a
14 security interest only.

15 (8) "Residence" means the real property and
16 improvements for a single-family house, duplex, triplex, or
17 quadruplex or a unit in a multiunit structure used for residential
18 purposes in which title to the individual units is transferred to
19 the owners under a condominium or cooperative system that is:

20 (A) owned by one or more adult persons; and

21 (B) used or intended to be used as a dwelling by
22 one of the owners.

23 (11) "Retainage" means an amount representing part of
24 a contract payment that is not required to be paid to the claimant
25 within the month following the month in which labor is performed,
26 material is furnished, or specially fabricated material is
27 delivered. [~~The term does not include retainage under Subchapter~~

1 ~~E.~~]

2 (13) "Subcontractor" means a person who labors or has
3 furnished labor or materials to fulfill an obligation to an
4 original contractor or to a subcontractor of any tier to perform all
5 or part of the work required by an original contract.

6 (14) "Work" means any part of construction or repair
7 of an improvement performed under an original contract.

8 SECTION 3. Section 53.003, Property Code, is amended by
9 amending Subsections (b) and (c) and adding Subsection (e) to read
10 as follows:

11 (b) Except as provided by Subsection (c) or (d), any [~~Any~~]
12 notice or other written communication required by this chapter must
13 [~~may~~] be delivered:

14 (1) in person to the party entitled to the notice or to
15 that party's agent;

16 (2) by certified mail; or

17 (3) by any other form of traceable, private delivery
18 or mailing service that can confirm proof of receipt [~~, regardless~~
19 ~~of the manner prescribed by law~~].

20 (c) If notice is sent by [~~registered or~~] certified mail,
21 deposit or mailing of the notice in the United States mail in the
22 form required constitutes compliance with the notice requirement.
23 This subsection does not apply if the law requires receipt of the
24 notice by the person to whom it is directed.

25 (e) In computing the period of days in which to provide a
26 notice or to take any action required under this chapter, if the
27 last day of the period is a Saturday, Sunday, or legal holiday, the

1 period is extended to include the next day that is not a Saturday,
2 Sunday, or legal holiday.

3 SECTION 4. Section 53.021, Property Code, is amended to
4 read as follows:

5 Sec. 53.021. PERSONS ENTITLED TO LIEN. [~~a~~] A person has
6 a lien if[+

7 [~~1~~] the person, under a contract with the owner or
8 the owner's agent, trustee, receiver, contractor, or
9 subcontractor:

10 (1) labors[~~, specially fabricates material,~~ or
11 furnishes labor or materials for construction or repair of an
12 improvement; [in this state of:

13 [~~(A) a house, building, or improvement,~~

14 [~~(B) a levee or embankment to be erected for the~~
15 ~~reclamation of overflow land along a river or creek, or~~

16 [~~(C) a railroad, and]~~

17 (2) [~~the person labors, specially fabricates the~~
18 ~~material, or furnishes the labor or materials under or by virtue of~~
19 ~~a contract with the owner or the owner's agent, trustee, receiver,~~
20 ~~contractor, or subcontractor.~~

21 [~~(b) A person who] specially fabricates material, [has a~~
22 ~~lien] even if the material is not delivered;~~

23 (3) is a licensed [

24 [~~(c) An] architect, engineer, or surveyor providing~~

25 services to prepare a design, drawing, [who prepares a] plan, [or]
26 plat, survey, or specification;

27 (4) [~~under or by virtue of a written contract with the~~

1 ~~owner or the owner's agent, trustee, or receiver in connection with~~
2 ~~the actual or proposed design, construction, or repair of~~
3 ~~improvements on real property or the location of the boundaries of~~
4 ~~real property has a lien on the property.~~

5 [~~d~~] ~~A person who~~ provides labor, plant material, or other
6 supplies for the installation of landscaping for an [~~a house,~~
7 ~~building, or~~] improvement, including the construction of a
8 retention pond, retaining wall, berm, irrigation system, fountain,
9 or other similar installation; or

10 (5) [~~under or by virtue of a written contract with~~
11 ~~the owner or the owner's agent, contractor, subcontractor, trustee,~~
12 ~~or receiver has a lien on the property.~~

13 [~~e~~] ~~A person who~~ performs labor as part of, or [~~who~~]
14 furnishes labor or materials for, the demolition of an improvement
15 [~~a structure~~] on real property [~~under or by virtue of a written~~
16 ~~contract with the owner of the property or the owner's agent,~~
17 ~~trustee, receiver, contractor, or subcontractor has a lien on the~~
18 ~~property~~].

19 SECTION 5. Sections 53.022(a), (c), and (d), Property Code,
20 are amended to read as follows:

21 (a) The lien extends to the [~~house, building, fixtures, or~~]
22 improvements [~~, the land reclaimed from overflow, or the railroad~~
23 ~~and all of its properties,~~] and to each lot of land necessarily
24 connected [~~or reclaimed~~].

25 (c) A lien against land in a city, town, or village extends
26 to each lot on which the [~~house, building, or~~] improvement is
27 situated or on which the labor was performed.

1 (d) A lien against land not in a city, town, or village
2 extends to not more than 50 acres on which the [~~house, building, or~~]
3 improvement is situated or on which the labor was performed.

4 SECTION 6. Section 53.023, Property Code, is amended to
5 read as follows:

6 Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures
7 payment for:

8 (1) the labor done or material furnished for the
9 construction, [~~or~~] repair, design, survey, or demolition; or

10 (2) the specially fabricated material, even if the
11 material has not been delivered or incorporated into the
12 construction or repair, less its fair salvage value [~~, or~~

13 [~~(3) the preparation of a plan or plat by an architect,~~
14 ~~engineer, or surveyor in accordance with Section 53.021(c)].~~

15 SECTION 7. Section 53.026(a), Property Code, is amended to
16 read as follows:

17 (a) A person who labors [~~, specially fabricates materials,~~]
18 or furnishes labor or materials under a direct contractual
19 relationship with a purported original contractor [~~another person~~]
20 is considered to be [~~in direct contractual relationship with the~~
21 ~~owner and has a lien as~~] an original contractor for purposes of
22 perfecting a mechanic's lien [~~, if:~~

23 [~~(1) the owner contracted with the other person for~~
24 ~~the construction or repair of a house, building, or improvements~~
25 ~~and the owner can effectively control that person through ownership~~
26 ~~of voting stock, interlocking directorships, or otherwise;~~

27 [~~(2) the owner contracted with the other person for~~

1 ~~the construction or repair of a house, building, or improvements~~
2 ~~and that other person can effectively control the owner through~~
3 ~~ownership of voting stock, interlocking directorships, or~~
4 ~~otherwise, or~~

5 ~~[(3) the owner contracted with the other person for~~
6 ~~the construction or repair of a house, building, or improvements~~
7 ~~and the contract was made without good faith intention of the~~
8 ~~parties that the other person was to perform the contract].~~

9 SECTION 8. Section 53.052, Property Code, is amended to
10 read as follows:

11 Sec. 53.052. FILING OF AFFIDAVIT. (a) An original
12 contractor claiming the lien must file an affidavit with the county
13 clerk:

14 (1) for projects other than residential construction
15 projects, not later than the 15th day of the fourth month after the
16 month in which the original contractor's work was completed,
17 terminated, or abandoned; or

18 (2) for residential construction projects, not later
19 than the 15th day of the third month after the month in which the
20 original contractor's work was completed, terminated, or
21 abandoned.

22 (b) Except as provided by Subsection (c) or (d) [(b)], a
23 claimant other than an original contractor [the person] claiming
24 the lien must file an affidavit with the county clerk [of the county
25 in which the property is located or into which the railroad extends]
26 not later than the 15th day of the fourth [calendar] month after the
27 later of:

1 (1) the month the claimant last provided labor or
2 materials; or

3 (2) the month the claimant would normally have been
4 required to deliver the last of specially fabricated materials that
5 have not been actually delivered [~~day on which the indebtedness~~
6 ~~accrues~~].

7 (c) [(b)] A claimant other than an original contractor
8 [person] claiming a lien arising from a residential construction
9 project must file an affidavit with the county clerk [~~of the county~~
10 ~~in which the property is located~~] not later than the 15th day of the
11 third [~~calendar~~] month after the later of:

12 (1) the month the claimant last provided labor or
13 materials; or

14 (2) the month the claimant would normally have been
15 required to deliver the last of specially fabricated materials that
16 have not been actually delivered.

17 (d) A claimant other than an original contractor claiming a
18 lien for retainage must file an affidavit with the county clerk not
19 later than the 15th day of the third month after the month in which
20 the original contract under which the claimant performed was
21 completed, terminated, or abandoned.

22 (e) An affidavit under this chapter must be filed in the
23 county where the improvements are located [~~day on which the~~
24 ~~indebtedness accrues~~].

25 [(c)] The county clerk shall record the affidavit in records
26 kept for that purpose and shall index and cross-index the affidavit
27 in the names of the claimant, the original contractor, and the

1 owner. Failure of the county clerk to properly record or index a
2 filed affidavit does not invalidate the lien.

3 SECTION 9. Section 53.055(a), Property Code, is amended to
4 read as follows:

5 (a) A person who files an affidavit must send a copy of the
6 affidavit [~~by registered or certified mail~~] to the owner or reputed
7 owner at the owner's last known business or residence address not
8 later than the fifth day after the date the affidavit is filed with
9 the county clerk.

10 SECTION 10. The heading to Section 53.056, Property Code,
11 is amended to read as follows:

12 Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER AND [~~OR~~]
13 ORIGINAL CONTRACTOR.

14 SECTION 11. Section 53.056, Property Code, is amended by
15 amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3),
16 and (a-4) to read as follows:

17 (a) Except as provided by Section 53.057 [~~Subchapter K~~], a
18 claimant other than an original contractor must give the notice
19 prescribed by Subsections (a-1) and (a-2) [~~this section~~] for the
20 lien to be valid.

21 (a-1) For all unpaid labor or materials provided, the
22 claimant must send a notice of claim for unpaid labor or materials
23 to the owner or reputed owner and the original contractor. The
24 notice must be sent:

25 (1) for projects other than residential construction
26 projects, not later than the 15th day of the third month after the
27 month during which:

1 (A) the labor or materials were provided; or
2 (B) the undelivered specially fabricated
3 materials would normally have been delivered; or

4 (2) for residential construction projects, not later
5 than the 15th day of the second month after the month during which:

6 (A) the labor or materials were provided; or
7 (B) the undelivered specially fabricated
8 materials would normally have been delivered.

9 (a-2) The notice must be in substantially the following
10 form:

11 "NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

12 "WARNING: This notice is provided to preserve lien rights.

13 "Owner's property may be subject to a lien if sufficient funds are
14 not withheld from future payments to the original contractor to
15 cover this debt.

16 "Date: _____

17 "Project description and/or address: _____

18 "Claimant's name: _____

19 "Type of labor or materials provided: _____

20 "Original contractor's name: _____

21 "Party with whom claimant contracted if different from
22 original contractor: _____

23 "Claim amount: _____

24 "_____ (Claimant's contact person)

25 "_____ (Claimant's address)"

26 (a-3) The notice may include an invoice or billing
27 statement.

1 (a-4) A claimant may give to the original contractor a
2 written notice of an unpaid labor or materials invoice that is past
3 due. A notice under this subsection is not required for a lien to be
4 valid.

5 SECTION 12. The heading to Section 53.057, Property Code,
6 is amended to read as follows:

7 Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE OF CLAIM FOR
8 UNPAID [CONTRACTUAL] RETAINAGE [CLAIM].

9 SECTION 13. Section 53.057, Property Code, is amended by
10 amending Subsections (a) and (f) and adding Subsections (a-1),
11 (a-2), and (a-3) to read as follows:

12 (a) To the extent that a claim for unpaid retainage is not
13 included wholly or partly in a notice provided under Section
14 53.056, a claimant other than an original contractor whose contract
15 provides for retainage must [A claimant may] give notice under this
16 section for a lien for unpaid retainage to be valid [instead of or
17 in addition to notice under Section 53.056 or 53.252 if the claimant
18 is to labor, furnish labor or materials, or specially fabricate
19 materials, or has labored, furnished labor or materials, or
20 specially fabricated materials, under an agreement with an original
21 contractor or a subcontractor providing for retainage].

22 (a-1) The claimant must send the notice of claim for unpaid
23 retainage to the owner or reputed owner and the original contractor
24 not later than the earlier of:

25 (1) the 30th day after the date the claimant's contract
26 is completed, terminated, or abandoned; or

27 (2) the 30th day after the date the original contract

1 is terminated or abandoned.

2 (a-2) The notice must be in substantially the following
3 form:

4 "NOTICE OF CLAIM FOR UNPAID RETAINAGE

5 "WARNING: This notice is provided to preserve lien rights.

6 "Owner's property may be subject to a lien if sufficient funds are
7 not withheld from future payments to the original contractor to
8 cover this debt.

9 "Date: _____

10 "Project description and/or address: _____

11 "Claimant's name: _____

12 "Type of labor or materials provided: _____

13 "Original contractor's name: _____

14 "Party with whom claimant contracted if different from
15 original contractor: _____

16 "Total retainage unpaid: _____

17 "_____ (Claimant's contact person)

18 "_____ (Claimant's address)"

19 (a-3) The notice may include an invoice or billing
20 statement.

21 (f) A claimant has a lien on, and the owner is personally
22 liable to the claimant for, the reserved [~~retained~~] funds under
23 Subchapter E if the claimant:

24 (1) gives notice in accordance with this section and:

25 (A) complies with Subchapter E; or

26 (B) files an affidavit claiming a lien not later

27 than [~~the earliest of:~~

1 [~~(i)~~] the date required for filing an
2 affidavit under the applicable provision of Section 53.052[~~+~~

3 [~~(ii)~~ the 40th day after the date stated in
4 ~~an affidavit of completion as the date of completion of the work~~
5 ~~under the original contract, if the owner sent the claimant notice~~
6 ~~of an affidavit of completion in the time and manner required,~~

7 [~~(iii)~~ the 40th day after the date of
8 ~~termination or abandonment of the original contract, if the owner~~
9 ~~sent the claimant a notice of such termination or abandonment in the~~
10 ~~time and manner required, or~~

11 [~~(iv)~~ the 30th day after the date the owner
12 ~~sent to the claimant to the claimant's address provided in the~~
13 ~~notice for contractual retainage, as required under Subsection (c),~~
14 ~~a written notice of demand for the claimant to file the affidavit~~
15 ~~claiming a lien]; and~~

16 (2) gives the notice of the filed affidavit as
17 required by Section 53.055.

18 SECTION 14. Sections 53.081(a) and (b), Property Code, are
19 amended to read as follows:

20 (a) If an owner receives notice under Section 53.056 or [~~+~~]
21 53.057, [~~53.058, 53.252, or 53.253,~~] the owner may withhold from
22 payments to the original contractor an amount necessary to pay the
23 claim for which he receives notice. The withholding may be in
24 addition to any reserved funds.

25 (b) If notice is sent under [~~in a form that substantially~~
26 ~~complies with]~~ Section 53.056 [~~or 53.252,~~], the owner may withhold
27 the funds immediately on receipt of the notice.

1 SECTION 15. Section 53.082, Property Code, is amended to
2 read as follows:

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

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

10 (2) if a lien affidavit has been filed, ~~[until]~~ the
11 lien claim has been satisfied or released.

12 SECTION 16. Section 53.084, Property Code, is amended to
13 read as follows:

14 Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount
15 the owner fails to reserve ~~[required to be retained]~~ under
16 Subchapter E, the owner is not liable for any amount paid to the
17 original contractor before the owner is authorized to withhold
18 funds under this subchapter.

19 (b) If the owner has received a notice ~~[the notices]~~
20 required by Section 53.056 or 53.057 ~~[Subchapter C or K]~~, if the
21 lien has been secured, and if the claim has been reduced to final
22 judgment, the owner is liable and the owner's property is subject to
23 a claim for any money paid to the original contractor after the
24 owner was authorized to withhold funds under this subchapter. The
25 owner is liable for that amount in addition to any amount for which
26 the owner ~~[he]~~ is liable under Subchapter E.

27 SECTION 17. The heading to Subchapter E, Chapter 53,

1 Property Code, is amended to read as follows:

2 SUBCHAPTER E. FUNDS RESERVED [~~REQUIRED RETAINAGE~~] FOR BENEFIT OF
3 LIEN CLAIMANTS

4 SECTION 18. Sections 53.101, 53.102, 53.103, 53.104, and
5 53.105, Property Code, are amended to read as follows:

6 Sec. 53.101. FUNDS REQUIRED TO BE RESERVED [~~RETAINAGE~~].

7 (a) During the progress of work under an original contract for
8 which a mechanic's lien may be claimed and for 30 days after the
9 work under the contract is completed, the owner shall reserve
10 [~~retain~~]:

11 (1) 10 percent of the contract price of the work to the
12 owner; or

13 (2) 10 percent of the value of the work, measured by
14 the proportion that the work done bears to the work to be done,
15 using the contract price or, if there is no contract price, using
16 the reasonable value of the completed work.

17 (b) In this section, "owner" includes the owner's agent,
18 trustee, or receiver.

19 Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS [~~RETAINAGE~~].

20 The reserved [~~retained~~] funds secure the payment of artisans and
21 mechanics who perform labor or service and the payment of other
22 persons who furnish material, material and labor, or specially
23 fabricated material for any contractor, subcontractor, agent, or
24 receiver in the performance of the work.

25 Sec. 53.103. LIEN ON RESERVED [~~RETAINED~~] FUNDS. A claimant
26 has a lien on the reserved [~~retained~~] funds if the claimant:

27 (1) sends the notices required by this chapter in the

1 time and manner required; and

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

5 (A) the work is completed;

6 (B) the original contract is terminated; or

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

9 Sec. 53.104. PREFERENCES. (a) Individual artisans and
10 mechanics are entitled to a preference to the reserved [~~retained~~]
11 funds and shall share proportionately to the extent of their claims
12 for wages and fringe benefits earned.

13 (b) After payment of artisans and mechanics who are entitled
14 to a preference under Subsection (a), other participating claimants
15 share proportionately in the balance of the reserved [~~retained~~]
16 funds.

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

26 (b) The claimants share the lien proportionately in
27 accordance with the preference provided by Section 53.104.

1 SECTION 19. Sections 53.106(a), (b), and (d), Property
2 Code, are amended to read as follows:

3 (a) An owner may file with the county clerk of the county in
4 which the property is located an affidavit of completion. The
5 affidavit must contain:

6 (1) the name and address of the owner;

7 (2) the name and address of the original contractor;

8 (3) a description, legally sufficient for
9 identification, of the real property on which the improvements are
10 located;

11 (4) a description of the improvements furnished under
12 the original contract;

13 (5) a statement that the improvements under the
14 original contract have been completed and the date of completion;
15 and

16 (6) a conspicuous statement that a claimant may not
17 have a lien on retained funds unless the claimant files an affidavit
18 claiming a lien in the time and manner required by this chapter [~~not~~
19 ~~later than the 40th day after the date the work under the original~~
20 ~~contract is completed~~].

21 (b) A copy of the affidavit must be sent [~~by certified or~~
22 ~~registered mail~~] to the original contractor [~~not later than the~~
23 ~~date the affidavit is filed~~] and to each claimant who sends a notice
24 [~~of lien liability~~] to the owner under Section 53.056 or [~~7~~] 53.057
25 [~~7, 53.058, 53.252, or 53.253~~] not later than the third day after the
26 date the affidavit is filed or the 10th day after the date the owner
27 receives the notice of lien liability, whichever is later.

1 (d) An [~~Except as provided by this subsection, an~~] affidavit
2 filed under this section [~~on or before the 10th day after the date~~
3 ~~of completion of the improvements~~] is prima facie evidence of the
4 date the work under the original contract is completed for purposes
5 of this chapter [~~subchapter and Section 53.057~~]. If the affidavit
6 is filed after the 10th day after the date of completion, the date
7 of completion for purposes of this subchapter [~~and Section 53.057~~]
8 is the date the affidavit is filed. This subsection does not apply
9 to a person to whom the affidavit was not sent as required by this
10 section.

11 SECTION 20. Sections 53.107(a) and (b), Property Code, are
12 amended to read as follows:

13 (a) Not later than the 10th day after the date an original
14 contract is terminated or the original contractor abandons
15 performance under the original contract, the owner shall give
16 notice to each subcontractor who, before the date of termination or
17 abandonment, has:

18 (1) given notice to the owner as provided by Section
19 53.056 or [~~7~~] 53.057 [~~7, or 53.058~~]; or

20 (2) sent to the owner [~~by certified or registered~~
21 ~~mail~~] a written request for notice of termination or abandonment.

22 (b) The notice must contain:

23 (1) the name and address of the owner;

24 (2) the name and address of the original contractor;

25 (3) a description, legally sufficient for
26 identification, of the real property on which the improvements are
27 located;

1 (4) a general description of the improvements agreed
2 to be furnished under the original contract;

3 (5) a statement that the original contract has been
4 terminated or that performance under the contract has been
5 abandoned;

6 (6) the date of the termination or abandonment; and

7 (7) a conspicuous statement that a claimant may not
8 have a lien on the retained funds unless the claimant files an
9 affidavit claiming a lien in the time and manner required by this
10 chapter [~~not later than the 40th day after the date of the~~
11 ~~termination or abandonment~~].

12 SECTION 21. Section 53.155, Property Code, is amended to
13 read as follows:

14 Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the [~~house,~~
15 ~~building,~~] improvement [~~, or any piece of railroad property~~] is
16 sold separately from the land, the officer making the sale shall
17 provide [~~place~~] the purchaser [~~in possession. The purchaser is~~
18 ~~entitled to~~] a reasonable time after the date of purchase within
19 which to remove and take possession of the purchased improvement
20 [~~property~~].

21 SECTION 22. Section 53.157, Property Code, is amended to
22 read as follows:

23 Sec. 53.157. DISCHARGE OF LIEN. An [~~A mechanic's lien or~~]
24 affidavit claiming a mechanic's lien filed under Section 53.052 may
25 be discharged of record by:

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

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

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

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

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

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

16 SECTION 23. Section 53.158, Property Code, is amended by
17 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
18 read as follows:

19 (a) Except as provided by Subsection (a-2) [~~(b)~~], suit must
20 be brought to foreclose the lien not later than the first
21 anniversary of [~~within two years after~~] the last day a claimant may
22 file the lien affidavit under Section 53.052 [~~or within one year~~
23 ~~after completion, termination, or abandonment of the work under the~~
24 ~~original contract under which the lien is claimed, whichever is~~
25 ~~later~~].

26 (a-1) Notwithstanding Section 16.069, Civil Practice and
27 Remedies Code, or any other law, if suit is pursued solely to

1 discharge a lien because limitations have expired on bringing a
2 lien foreclosure suit, the lien claimant's rights to pursue a suit
3 to foreclose a lien are not revived.

4 (a-2) The limitations period established under Subsection
5 (a) may be extended to not later than the second anniversary of the
6 date the claimant filed the lien affidavit under Section 53.052 if,
7 before the expiration of the limitations period established under
8 Subsection (a), the claimant enters into a written agreement with
9 the then-current record owner of the property to extend the
10 limitations period. The agreement must be recorded with the clerk
11 of the same county where the lien was recorded and is considered to
12 be notice of the extension to any subsequent purchaser.

13 SECTION 24. Sections 53.160(b) and (c), Property Code, are
14 amended to read as follows:

15 (b) The grounds for objecting to the validity or
16 enforceability of the claim or lien for purposes of the motion are
17 limited to the following:

18 (1) notice of claim was not timely furnished to the
19 owner or original contractor as required by Section 53.056 or [~~7~~]
20 53.057 [~~7~~, ~~53.058~~, ~~53.252~~, ~~or~~ ~~53.253~~];

21 (2) an affidavit claiming a lien failed to comply with
22 Section 53.054 or was not filed as required by Section 53.052;

23 (3) notice of the filed affidavit was not furnished to
24 the owner or original contractor as required by Section 53.055;

25 (4) the deadlines for perfecting a lien claim for
26 retainage under this chapter have expired and the owner complied
27 with the requirements of Section 53.101 and paid the retainage and

1 all other funds owed to the original contractor before:

2 (A) the claimant perfected the lien claim; and

3 (B) the owner received a notice of the claim as
4 required by this chapter;

5 (5) all funds subject to the notice of a claim to the
6 owner and a notice regarding the retainage have been deposited in
7 the registry of the court and the owner has no additional liability
8 to the claimant;

9 (6) when the lien affidavit was filed on homestead
10 property:

11 (A) no contract was executed or filed as required
12 by Section 53.254;

13 (B) the affidavit claiming a lien failed to
14 contain the notice as required by Section 53.254; or

15 (C) the notice of the claim failed to include the
16 statement required by Section 53.254; and

17 (7) the claimant executed a valid and enforceable
18 waiver or release of the claim or lien claimed in the affidavit.

19 (c) The claimant is not required to file a response. The
20 claimant and any other party that has appeared in the proceeding
21 must be notified by at least 30 [~~21~~] days before the date of the
22 hearing on the motion. A motion may not be heard before the 30th
23 [~~21st~~] day after the date the claimant answers or appears in the
24 proceeding. The claimant must be allowed expedited discovery
25 regarding information relevant to the issues listed under
26 Subsection (b).

27 SECTION 25. Section 53.173(c), Property Code, is amended to

1 read as follows:

2 (c) The notice must be served on each obligee by mailing a
3 copy of the notice and the bond to the obligee by certified [~~United~~
4 ~~States~~] mail [~~, return receipt requested,~~] addressed to the claimant
5 at the address stated in the lien affidavit for the obligee.

6 SECTION 26. Section 53.205(a), Property Code, is amended to
7 read as follows:

8 (a) The bond protects all persons with a claim that is:

9 (1) perfected in the manner prescribed for fixing a
10 lien under Subchapter C [~~or, if the claim relates to a residential~~
11 ~~construction project, under Subchapter K~~]; or

12 (2) perfected in the manner prescribed by Section
13 53.206.

14 SECTION 27. Section 53.206, Property Code, is amended to
15 read as follows:

16 Sec. 53.206. PERFECTION OF CLAIM. (a) Except as provided
17 by Subsection (b), to [~~To~~] perfect a claim against a bond in a
18 manner other than that prescribed by Subchapter C [~~or K~~] for fixing
19 a lien, a person must [+]

20 [~~(1)~~] give notice under Sections 53.056 and 53.057, as
21 applicable, to the original contractor and surety on the bond [~~all~~
22 ~~applicable notices under the appropriate subchapter, and~~

23 [~~(2)~~] give to the surety on the bond, instead of the
24 owner, all notices under the appropriate subchapter required to be
25 given to the owner].

26 (b) To perfect a claim for retainage under this section, a
27 claimant [~~person~~] is not required to[+]

1 ~~[(1)]~~ give notice to the surety under Section 53.057
2 if [~~unless~~] the claimant has a direct contractual relationship
3 with the original contractor [~~and the agreed retainage is in excess~~
4 ~~of 10 percent of the contract,~~

5 ~~[(2)]~~ give notice to the surety under Section 53.058(b)
6 ~~or, if the claim relates to a residential construction project,~~
7 ~~under Section 53.253(c), or~~

8 ~~[(3)]~~ file any affidavit with the county clerk].

9 (c) A claimant that provides the notices described by this
10 section is not required to file an affidavit claiming a mechanic's
11 lien to perfect a claim under the bond [~~For the claim to be valid, a~~
12 ~~person must give notice in the time and manner required by this~~
13 ~~section, but the content of the notices need only provide fair~~
14 ~~notice of the amount and the nature of the claim asserted)].~~

15 (d) A person satisfies the requirements of this section
16 relating to providing notice to the surety if the person mails the
17 notice by certified [~~or registered~~] mail to the surety:

18 (1) at the address stated on the bond or on an
19 attachment to the bond;

20 (2) at the address on file with the Texas Department of
21 Insurance; or

22 (3) at any other address allowed by law.

23 SECTION 28. Section 53.207(a), Property Code, is amended to
24 read as follows:

25 (a) If the owner receives any of the notices or a lien is
26 fixed under this chapter [~~Subchapter C or K~~], the owner shall mail
27 to the surety on the bond a copy of all notices received.

1 SECTION 29. Section 53.208(a), Property Code, is amended to
2 read as follows:

3 (a) A claimant may sue the principal and surety on the bond
4 either jointly or severally, if the [~~his~~] claim remains unpaid for
5 60 days after the claimant perfects the claim.

6 SECTION 30. Section 53.232, Property Code, is amended to
7 read as follows:

8 Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien
9 claimant must send written notice of his claim by [~~registered or~~]
10 certified mail to:

11 (1) the officials of the state, county, town, or
12 municipality whose duty it is to pay the contractor; and

13 (2) the contractor at the contractor's last known
14 business or residence address.

15 SECTION 31. Section 53.238, Property Code, is amended to
16 read as follows:

17 Sec. 53.238. NOTICE OF BOND. The official with whom the
18 bond is filed shall send an exact copy of the bond by [~~registered~~
19 ~~mail or~~] certified mail, return receipt requested, to all
20 claimants.

21 SECTION 32. The heading to Section 53.254, Property Code,
22 is amended to read as follows:

23 Sec. 53.254. CONTRACTUAL REQUIREMENTS FOR LIEN ON
24 HOMESTEAD.

25 SECTION 33. Section 53.254(g), Property Code, is amended to
26 read as follows:

27 (g) For the lien on a homestead to be valid, the notice

1 required to be given to the owner under Subchapter C [~~Section~~
2 ~~53.252~~] must include or have attached the following statement:

3 "If a subcontractor or supplier who furnishes materials or
4 performs labor for construction of improvements on your property is
5 not paid, your property may be subject to a lien for the unpaid
6 amount if:

7 (1) after receiving notice of the unpaid claim from
8 the claimant, you fail to withhold payment to your contractor that
9 is sufficient to cover the unpaid claim until the dispute is
10 resolved; or

11 (2) during construction and for 30 days after
12 completion of your contractor's work [~~construction~~], you fail to
13 reserve [~~retain~~] 10 percent of the contract price or 10 percent of
14 the value of the work performed by your contractor.

15 "If you have complied with the law regarding the reservation
16 of 10 percent of the contract price or value of work [~~retainage~~] and
17 you have withheld payment to the contractor sufficient to cover any
18 written notice of claim and have paid that amount, if any, to the
19 claimant, any lien claim filed on your property by a subcontractor
20 or supplier, other than a person who contracted directly with you,
21 will not be a valid lien on your property. In addition, except for
22 the required 10 percent reservation [~~retainage~~], you are not liable
23 to a subcontractor or supplier for any amount paid to your
24 contractor before you received written notice of the claim."

25 SECTION 34. Section 53.255(b), Property Code, is amended to
26 read as follows:

27 (b) The disclosure statement must read substantially

1 similar to the following:

2 "KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You
3 are about to enter into a transaction to build a new home or remodel
4 existing residential property. Texas law requires your contractor
5 to provide you with this brief overview of some of your rights,
6 responsibilities, and risks in this transaction.

7 "CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may
8 not require you to convey your real property to your contractor as a
9 condition to the agreement for the construction of improvements on
10 your property.

11 "KNOW YOUR CONTRACTOR. Before you enter into your agreement
12 for the construction of improvements to your real property, make
13 sure that you have investigated your contractor. Obtain and verify
14 references from other people who have used the contractor for the
15 type and size of construction project on your property.

16 "GET IT IN WRITING. Make sure that you have a written
17 agreement with your contractor that includes: (1) a description of
18 the work the contractor is to perform; (2) the required or
19 estimated time for completion of the work; (3) the cost of the work
20 or how the cost will be determined; and (4) the procedure and
21 method of payment, including provisions for statutory reservation
22 of funds [~~retainage~~] and conditions for final payment. If your
23 contractor made a promise, warranty, or representation to you
24 concerning the work the contractor is to perform, make sure that
25 promise, warranty, or representation is specified in the written
26 agreement. An oral promise that is not included in the written
27 agreement may not be enforceable under Texas law.

1 "READ BEFORE YOU SIGN. Do not sign any document before you
2 have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN
3 UNTRUE STATEMENT. Take your time in reviewing documents. If you
4 borrow money from a lender to pay for the improvements, you are
5 entitled to have the loan closing documents furnished to you for
6 review at least one business day before the closing. Do not waive
7 this requirement unless a bona fide emergency or another good cause
8 exists, and make sure you understand the documents before you sign
9 them. If you fail to comply with the terms of the documents, you
10 could lose your property. You are entitled to have your own
11 attorney review any documents. If you have any question about the
12 meaning of a document, consult an attorney.

13 "GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before
14 construction commences, your contractor is required to provide you
15 with a list of the subcontractors and suppliers the contractor
16 intends to use on your project. Your contractor is required to
17 supply updated information on any subcontractors and suppliers
18 added after the list is provided. Your contractor is not required
19 to supply this information if you sign a written waiver of your
20 rights to receive this information.

21 "MONITOR THE WORK. Lenders and governmental authorities may
22 inspect the work in progress from time to time for their own
23 purposes. These inspections are not intended as quality control
24 inspections. Quality control is a matter for you and your
25 contractor. To ensure that your home is being constructed in
26 accordance with your wishes and specifications, you should inspect
27 the work yourself or have your own independent inspector review the

1 work in progress.

2 "MONITOR PAYMENTS. If you use a lender, your lender is
3 required to provide you with a periodic statement showing the money
4 disbursed by the lender from the proceeds of your loan. Each time
5 your contractor requests payment from you or your lender for work
6 performed, your contractor is also required to furnish you with a
7 disbursement statement that lists the name and address of each
8 subcontractor or supplier that the contractor intends to pay from
9 the requested funds. Review these statements and make sure that the
10 money is being properly disbursed.

11 "CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if
12 a subcontractor or supplier who furnishes labor or materials for
13 the construction of improvements on your property is not paid, you
14 may become liable and your property may be subject to a lien for the
15 unpaid amount, even if you have not contracted directly with the
16 subcontractor or supplier. To avoid liability, you should take the
17 following actions:

18 (1) If you receive a written notice from a
19 subcontractor or supplier, you should withhold payment from your
20 contractor for the amount of the claim stated in the notice until
21 the dispute between your contractor and the subcontractor or
22 supplier is resolved. If your lender is disbursing money directly
23 to your contractor, you should immediately provide a copy of the
24 notice to your lender and instruct the lender to withhold payment in
25 the amount of the claim stated in the notice. If you continue to pay
26 the contractor after receiving the written notice without
27 withholding the amount of the claim, you may be liable and your

1 property may be subject to a lien for the amount you failed to
2 withhold.

3 (2) During construction and for 30 days after final
4 completion, termination, or abandonment of the contract by the
5 contractor, you should reserve [~~withhold~~] or cause your lender to
6 reserve [~~withhold~~] 10 percent of the amount of payments made for the
7 work performed by your contractor. [~~This is sometimes referred to~~
8 ~~as 'statutory retainage.'~~] If you choose not to reserve [~~withhold~~]
9 the 10 percent for at least 30 days after final completion,
10 termination, or abandonment of the contract by the contractor and
11 if a valid claim is timely made by a claimant and your contractor
12 fails to pay the claim, you may be personally liable and your
13 property may be subject to a lien up to the amount that you failed to
14 reserve [~~withhold~~].

15 "If a claim is not paid within a certain time period, the
16 claimant is required to file a mechanic's lien affidavit in the real
17 property records in the county where the property is located. A
18 mechanic's lien affidavit is not a lien on your property, but the
19 filing of the affidavit could result in a court imposing a lien on
20 your property if the claimant is successful in litigation to
21 enforce the lien claim.

22 "SOME CLAIMS MAY NOT BE VALID. When you receive a written
23 notice of a claim or when a mechanic's lien affidavit is filed on
24 your property, you should know your legal rights and
25 responsibilities regarding the claim. Not all claims are valid. A
26 notice of a claim by a subcontractor or supplier is required to be
27 sent, and the mechanic's lien affidavit is required to be filed,

1 within strict time periods. The notice and the affidavit must
2 contain certain information. All claimants may not fully comply
3 with the legal requirements to collect on a claim. If you have paid
4 the contractor in full before receiving a notice of a claim and have
5 withheld the 10 percent of the contract price or value of work
6 [~~fully complied with the law regarding statutory retainage~~], you
7 may not be liable for that claim. Accordingly, you should consult
8 your attorney when you receive a written notice of a claim to
9 determine the true extent of your liability or potential liability
10 for that claim.

11 "OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you
12 receive a notice of claim, do not release withheld funds without
13 obtaining a signed and notarized release of lien and claim from the
14 claimant. You can also reduce the risk of having a claim filed by a
15 subcontractor or supplier by requiring as a condition of each
16 payment made by you or your lender that your contractor furnish you
17 with an affidavit stating that all bills have been paid. Under
18 Texas law, on final completion of the work and before final payment,
19 the contractor is required to furnish you with an affidavit stating
20 that all bills have been paid. If the contractor discloses any
21 unpaid bill in the affidavit, you should withhold payment in the
22 amount of the unpaid bill until you receive a waiver of lien or
23 release from that subcontractor or supplier.

24 "OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain
25 a title insurance policy to insure that the title to your property
26 and the existing improvements on your property are free from liens
27 claimed by subcontractors and suppliers. If your policy is issued

1 before the improvements are completed and covers the value of the
2 improvements to be completed, you should obtain, on the completion
3 of the improvements and as a condition of your final payment,
4 a 'completion of improvements' policy endorsement. This
5 endorsement will protect your property from liens claimed by
6 subcontractors and suppliers that may arise from the date the
7 original title policy is issued to the date of the endorsement."

8 SECTION 35. Section 53.281(b), Property Code, is amended to
9 read as follows:

10 (b) A waiver and release is effective to release the owner,
11 the owner's property, the contractor, and the surety on a payment
12 bond from claims and liens only if:

13 (1) the waiver and release substantially complies with
14 one of the forms prescribed by Section 53.284;

15 (2) the waiver and release is signed by the claimant or
16 the claimant's authorized agent [~~and notarized~~]; and

17 (3) in the case of a conditional release, evidence of
18 payment to the claimant exists.

19 SECTION 36. The following provisions of the Property Code
20 are repealed:

21 (1) Section 53.003(a);

22 (2) Section 53.026(b);

23 (3) Section 53.053;

24 (4) Sections 53.056(b), (c), (d), (e), and (f);

25 (5) Sections 53.057(b), (b-1), (c), (d), (e), and (g);

26 (6) Section 53.058;

27 (7) Section 53.081(d);

- 1 (8) Section 53.083;
- 2 (9) Section 53.158(b); and
- 3 (10) Sections 53.252 and 53.253.

4 SECTION 37. The changes in law made by this Act apply only
5 to an original contract entered into on or after the effective date
6 of this Act. An original contract entered into before the effective
7 date of this Act is governed by the law as it existed immediately
8 before the effective date of this Act, and that law is continued in
9 effect for that purpose.

10 SECTION 38. This Act takes effect January 1, 2022.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 23, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2237 by Burrows (Relating to mechanic's, contractor's, or materialman's liens.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to mechanic's, contractor's, and materialman's liens. This analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 459 Board of Architectural Examiners

LBB Staff: JMc, LBO, SZ, MB, MPUK

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 20, 2021

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB2237** by Burrows (relating to mechanic's, contractor's, or materialman's liens.), **Committee Report 2nd House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to mechanic's, contractor's, and materialman's liens. This analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 459 Board of Architectural Examiners

LBB Staff: JMc, SZ, MB, MPUK

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 16, 2021

TO: Honorable Kelly Hancock, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2237 by Burrows (Relating to mechanic's, contractor's, or materialman's liens.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to mechanic's, contractor's, and materialman's liens. This analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 459 Board of Architectural Examiners

LBB Staff: JMc, SZ, MB, MPUK

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

Revision 1

April 27, 2021

TO: Honorable Chris Turner, Chair, House Committee on Business & Industry

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2237 by Burrows (relating to mechanic's, contractor's, or materialman's liens.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to mechanic's, contractor's, and materialman's liens. This analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 459 Board of Architectural Examiners

LBB Staff: JMc, SZ, MB, MPUK

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 8, 2021

TO: Honorable Chris Turner, Chair, House Committee on Business & Industry

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2237 by Burrows (relating to mechanic's, contractor's, or materialman's liens.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to mechanic's, contractor's, and materialman's liens. This analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 459 Board of Architectural Examiners

LBB Staff: JMc, SZ, MB, MPUK

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 5, 2021

TO: Honorable Chris Turner, Chair, House Committee on Business & Industry

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2237 by Burrows (Relating to mechanic's, contractor's, or materialman's liens.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to mechanic's, contractor's, and materialman's liens. This analysis anticipates no fiscal implication to the State.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 459 Board of Architectural Examiners

LBB Staff: JMc, SZ, MB, MPUK