

BILL ANALYSIS

Senate Research Center

H.B. 2518
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2518 addresses protections for the right to payment for subcontractors and suppliers whose labor and materials are used for newly built improvements on public property that has been leased to a private entity. The Government Code requires payment and performance bonds for public work contracts, with a few exceptions. The general contractor purchases a performance bond as security for performing the work under the contract. The general contractor also purchases a payment bond as security for payment of the subcontractors' and suppliers' invoices. However, in cases where the land is publicly owned, it cannot be subjected to a mechanic's or materialman's lien. Thus, there is no effective protection of the right to payment for subcontractors and suppliers whose labor and materials are used for improvement to privately leased, publicly owned property. H.B. 2518 seeks to remedy that by mandating terms that must be included in a lease between a governmental entity and a private entity. Those terms include that any construction on the leased property must be bonded and that the lessee must notify the governmental entity before construction begins so that the governmental entity may have an opportunity to verify the bonds.

H.B. 2518 amends current law relating to required lease terms for public property leased to a nongovernmental entity and creates a criminal offense.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 2252, Government Code, by adding Section 2252.909, as follows:

Sec. 2252.909. REQUIRED LEASE TERMS FOR LEASE OF PUBLIC PROPERTY.

(a) Defines "governmental entity."

(b) Requires that a lease between a governmental entity and another person regarding public property contain lease terms requiring the person to:

(1) include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor:

(A) execute a payment bond that conforms to Subchapter I (Bond to Pay Liens or Claims), Chapter 53, Property Code; and

(B) execute a performance bond in an amount equal to the amount of the contract for the protection of the governmental entity and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and

(2) provide to the governmental entity a notice of commencement consistent with this section at least 90 days before the date the construction, alteration, or repair of any improvement to the leased property begins.

(c) Requires that a notice of commencement under Subsection (b):

(1) identify the public property where the work will be performed;

(2) describe the work to be performed;

(3) state the total cost of the work to be performed;

(4) include copies of the performance and payment bonds required under Subsection (b); and

(5) include a written acknowledgment signed by the contractor stating that copies of the required performance and payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

(d) Authorizes the governmental entity, on or before the 10th day after the date a governmental entity receives a notice of commencement for the construction, alteration, or repair of an improvement to leased property required under Subsection (b)(2), to notify the leaseholder that the construction, alteration, or repair is prohibited from proceeding.

(e) Provides that a person commits an offense if the person materially misrepresents information in a notice of commencement. Provides that an offense under this subsection is a Class A misdemeanor.

SECTION 2. Amends Section 2253.027, Government Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that if a governmental entity fails to obtain from a prime contractor a payment bond as required by Section 2253.021 (Performance and Payment Bonds Required) or fails to include in a lease the lease terms required by Section 2252.909:

(1)-(2) makes no changes to these subdivisions.

(c) Provides that a governmental entity is not liable as a surety under Subsection (a)(1) (relating to providing that a governmental entity is subject to the same liability that a surety would have under certain circumstances) if a person leasing property from the entity fails to submit to the entity the notice of commencement required by Section 2252.909.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2023.