

BILL ANALYSIS

C.S.H.B. 3712
By: Guillen
Trade, Workforce & Economic Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, both public and private construction contracts include broad retainage provisions that statutorily require governmental entities and owners to withhold up to 10 percent of contract funds throughout a project. While the law requires this reserve to protect lien rights, it does not distinguish between labor and specially fabricated materials that have already been delivered and accepted. The bill author has informed the committee that this results in scenarios where subcontractors are not paid for expensive, custom-built materials even though they no longer have possession of the materials and have fulfilled their contractual obligations. C.S.H.B. 3712 seeks to address these inequities and improve payment fairness without compromising protections related to actual installation work by prohibiting the retention or withholding of certain funds reserved or retained for specially fabricated materials that have been delivered and accepted and are covered by a manufacturer's warranty but making those prohibitions inapplicable to the value of the installation of such materials by a subcontractor.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3712 amends the Government Code to prohibit a governmental entity from withholding retainage under statutory provisions relating to retained public works contract payments for specially fabricated material that meets the following criteria:

- has been delivered by a subcontractor and accepted by the governmental entity and the prime contractor at the site or off-site; and
- is covered by a manufacturer's warranty under a contract with the governmental entity or assigned to the governmental entity by the prime contractor.

This prohibition expressly does not apply to funds for the value of the installation of the specially fabricated material by a subcontractor.

C.S.H.B. 3712 amends the Property Code, with respect to the requirement for an owner to reserve certain funds during the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work under the contract is completed, to establish that an owner is not required to reserve and may not retain under a contract funds for specially fabricated material that meets the following criteria:

- has been delivered by a subcontractor and accepted by the owner or a contractor or subcontractor at the site or off-site; and

- is covered by a manufacturer's warranty under a contract with the owner or a contractor or subcontractor.

This provision expressly does not apply to funds for the value of the installation of specially fabricated material by a subcontractor.

C.S.H.B. 3712 establishes that the bill's provisions apply only to an original contract that is entered into on or after the bill's effective date. An original contract entered into before the bill's effective date is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 3712 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions absent from the introduced that prohibit a governmental entity from withholding retainage for specially fabricated material meeting specified criteria and except from the prohibition funds for the value of the installation of the specially fabricated material by a subcontractor.

With respect to funds reserved during the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work under the contract is completed, the substitute makes the following changes:

- replaces the introduced version's prohibition against an owner, contractor, or subcontractor reserving funds for specially fabricated material that meets specified criteria with a provision establishing that an owner is not required to reserve and may not retain under a contract funds for such material; and
- establishes that such a provision does not apply to funds for the value of the installation of specially fabricated material by a subcontractor, whereas the introduced did not establish that.