

BILL ANALYSIS

C.S.H.B. 5435
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 88th Legislature passed H.B. 2518, which established required terms for leases of public property by a nongovernmental entity. Specifically, the law requires a tenant to provide the governmental entity, at least 90 days before the date of construction, alteration, or repair to the leased property begins, with a notice of commencement that must describe the work, state the total cost of the work to be performed, and include copies of the payment and performance bonds required. The bill author has informed the committee that while this notice requirement works well in most cases, it has created challenges for institutions of higher education that manage projects with short timelines or emergency repairs, where exact details like scope, contractor, and cost are not known 90 days in advance. C.S.H.B. 5435 seeks to remedy this issue by making certain notice requirements in a lease of public property inapplicable to a public institution of higher education.

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. 5435 amends the Government Code to make the requirement for a lease between a governmental entity and another person regarding public property to contain a term requiring notice of commencement consistent with applicable state law to be provided to a governmental entity at least 90 days before the date the construction, alteration, or repair of any improvement to the leased property begins inapplicable to a lease between a public institution of higher education and another person regarding public property.

C.S.H.B. 5435 applies only to a lease between a governmental entity and another person regarding public property that is entered into on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5435 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 omits the provisions from the introduced that did the following:

- revised the requirement for a lease between an applicable governmental entity and another person regarding public property to contain lease terms requiring the person to include in each contract for the construction, alteration, or repair of an improvement to the leased property a condition that the contractor take certain actions and to provide to the governmental entity a notice of commencement by a certain date, as follows:
 - with respect to the condition that the contractor execute a payment bond that conforms to applicable statutory provisions, made the condition contingent on the following:
 - the contract is in excess of \$25,000, and the governmental entity is not a municipality or a joint board created under Transportation Code provisions relating to joint operations; or
 - the contract is in excess of \$50,000, and the governmental entity is a municipality or a joint board created under such statutory provisions;
 - with respect to the condition that the contractor 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, made the condition contingent on the contract being in excess of \$100,000; and
 - with respect to the requirement for the person to provide to the governmental entity a notice of commencement, specified that, in the event of an emergency, the person provide the notice at least 30 days before the date the construction, alteration, or repair of any improvement to the leased property begins, as alternative to providing the notice at least 90 days before the date the construction, alteration, or repair of any improvement to the leased property begins; and
- defined "emergency" for these purposes as a sudden, urgent occurrence that requires immediate action.

The substitute includes a provision, absent from the introduced, making the requirement for an applicable lease to contain a term requiring notice of commencement consistent with applicable state law to be provided to a governmental entity at least 90 days before the date the construction, alteration, or repair of any improvement to the leased property begins inapplicable to a lease between a public institution of higher education and another person regarding public property.