

BILL ANALYSIS

H.B. 1679
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the status of a contractor's retainage lien in the event of a foreclosure on the property. State law requires nonpublic property owners to withhold retainage in the amount of 10 percent of the value of the work that is performed by the contractor under a construction contract until completion of the contract. Therefore, a contractor may provide a full month of work before the full amount of the contract is paid. However, if there is a loan default on the project and the lender forecloses, the remaining 10 percent is not paid out to the contractor for labor already provided. H.B. 1679 seeks to remedy this situation by ensuring that a contractor's retainage lien, if not satisfied during foreclosure, would survive until satisfied by a subsequent owner.

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

H.B. 1679 amends the Property Code to require a person claiming a mechanic's lien for retainage who receives a notice of a foreclosure sale to file an affidavit to perfect the lien as follows:

- not later than the fifth day before the date of the foreclosure sale; or
- if the foreclosure sale does not occur on the date stated in the notice, as follows:
 - the applicable date by which a person is required to file an affidavit claiming a lien for a lien for retainage for benefit of lien claimants; or
 - not later than the 15th day of the fourth calendar month after the day on which the indebtedness accrues for a lien for an amount or agreed percentage of money in a construction contract or subcontract that is withheld from a payment and not due to be paid until completion of the contract or an agreed date.

H.B. 1679 establishes that a person who purchases property that is sold due to the foreclosure of a lien that secures a financing agreement or loan to pay for the construction or repair of an improvement to real property takes the property subject to the amount of retainage, as defined by the bill, included in an unreleased lien for which an affidavit is filed. The bill provides the following:

- a lender under such an agreement or loan must provide written notice, as prescribed by the bill, to the original contractor not later than the 35th day before the date of the foreclosure sale;

- an original contractor who receives the notice must provide a copy of the notice to each subcontractor of the contractor not later than the fifth day after receipt of the notice; and
- a subcontractor who receives the notice must provide a copy of the notice to each subcontractor of the subcontractor not later than the fifth day after receipt of the notice.

EFFECTIVE DATE

September 1, 2021.