

- SUBJECT:** Allowing a mechanic's lien on real property for demolition work
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 6 ayes — Giddings, Kolkhorst, Martinez Fischer, J. Moreno, Solomons, Zedler
- 0 nays
- 3 absent — Elkins, Bohac, Oliveira
- WITNESSES:** For — Fred Bosse, Southern Crushed Concrete; Raymond Risk, Texas Construction Association
- Against — None
- BACKGROUND:** Property Code, sec. 53.021 lists people entitled to a mechanic's, contractor's, or materialman's lien on property for the amount of labor and/or materials furnished. These include a person who labors, fabricates material, or furnishes labor and materials to build or repair a house, building, or improvement under contract with the owner or an authorized agent, or an architect, engineer, surveyor, or landscaper under contract with the owner or agent.
- DIGEST:** CSHB 208 would entitle a person who performed labor or furnished labor or materials for the demolition of a structure, under a written contract with the property owner or the owner's agent, trustee, receiver, contractor, or subcontractor, to a lien on the property for the amount of labor and/or materials furnished.
- The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.
- SUPPORTERS SAY:** CSHB 208 would ensure that people who perform demolition could receive payment for their important work. Although a demolisher can sue to recover payment under the terms of a contract, this can be difficult. If the owner cannot pay, the demolisher does not recover the costs of labor and materials.

However, if demolishers could attach liens to property for these costs, they would be assured of payment when the property was sold.

The intent of Property Code, ch. 53 is to provide a lien for labor and materials that improve property, and demolition work improves property. Demolition work often is an essential part of improving property in that it is the first work done before many construction projects can begin. Certain property may be devalued because of a structure that needs to be demolished. For example, if a property is worth \$100,000 and it will cost \$5,000 to remove a crumbling shack on it, a buyer will consider the cost of demolishing the shack before acquiring the property. Once this shack was removed, a buyer would be willing to pay the full value of the property because of the improvement.

CSHB 208 could decrease the cost of having property demolished. Contractors often build in an added cost for a job to account for the risk that they might not receive payment. If demolishers could put a lien on property, they would not have to build in the extra costs of security.

**OPPONENTS
SAY:**

Demolishing property is not an improvement under the intent of the existing statute. The law specifically applies to building structures, such as a house, or installing plumbing, and courts consistently have found that it does not apply to demolition. Adding demolishers to the list of those who could obtain a lien would run counter to the basic intent of the statute. Demolishers remove something from the property rather than adding to it, and they do not increase the value of the land. Demolishers who have not been paid have an adequate remedy under their contracts in that they can sue for and recover their costs.

Construction prices have little to do with contractors' ability to obtain liens on property. Prices are driven by factors such as competition in the locality and are not likely to fall simply because demolishers could put liens on property they worked on.

NOTES:

The committee substitute would specify that a person would be entitled to a lien for performing demolition work under a contract with a trustee, receiver, contractor, or subcontractor, in addition to the owner or the owner's agent.