

SUBJECT: Allowing landscaping lien for contracts with a contractor or subcontractor

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Deshotel, Orr, Bohac, Garza, Giddings, Quintanilla, Workman

0 nays

1 present not voting — Solomons

1 absent — S. Miller

WITNESSES: For — Ken Coggins; (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business; Jon Fisher, Associated Builders and Contractors of Texas; Jim Reaves, Texas Nursery and Landscape Association; Michael White, Texas Construction Association)

Against — (*Registered, but did not testify*: Irene Adolph and Lynn Walshak, HOA Reform Coalition; Irene Adolph, HOAdata.org)

BACKGROUND: Under Property Code, sec. 53.021(d), a person has a lien on property if he or she provides labor, plant material, or other supplies for the installation of landscaping for a house, building, or improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation. The person must be working under or by virtue of a written contract with the owner or the owner's agent, trustee, or receiver.

DIGEST: CSHB 2525 would amend sec. 53.021(d) to state that for a person to have a landscaping lien, the person would have to be working under or by virtue of a written contract with the owner or the owner's agent, contractor, subcontractor, trustee, or receiver.

The bill would take effect September 1, 2011 and would apply to a lien claim arising under or by virtue of a contract entered into on or after the effective date.

**SUPPORTERS  
SAY:**

Most people who provide landscaping services are hired by a general contractor or subcontractor rather than the property owner. Therefore, a landscaper's ability to file a lien under current law is uncertain since the law is silent on a contract with a contractor or subcontractor. CSHB 2525 would clarify the law and put landscapers on equal footing with other trades in Texas.

Retainage laws protect owners when a landscaper or other subcontractor is not paid by the general contractor. If the owner properly retains 10 percent of the contract price, the owner would not be subject to a lien because of nonpayment by the general contractor.

**OPPONENTS  
SAY:**

It is not the property owner's responsibility to ensure that a landscaper is paid in cases where the owner already has paid the general contractor. Paying the landscaper is the responsibility of the contractor or subcontractor. It therefore would be unfair to the owner to allow a landscaper to file a lien on the property. Allowing too many people to place a lien on property defeats the purpose of hiring a general contractor.