

## **BILL ANALYSIS**

Senate Research Center

S.B. 468  
By: Armbrister  
Jurisprudence  
3-5-97  
As Filed

### **DIGEST**

Currently, Texas law contains two separate "prompt payment" statutes on private and public construction projects that provide for timely payment of contractors and subcontractors, interest penalties for late payments, and withholding of payment for disputes over whether work was properly performed. Under these provisions, contractors and subcontractors are often not able to suspend work on a project when they have not been paid. Contracts with owners and governmental entities make contractors and subcontractors liable for any damages that may occur to the construction project should they suspend work. This situation forces contractors and subcontractors to continue to provide labor and materials even when they have not been paid by owner or a governmental entity. This bill will provide new regulations regarding prompt payment of contractors and subcontractors and will authorize contractors and subcontractors to stop work if they are not paid.

### **PURPOSE**

As proposed, S.B. 468 provides new regulations regarding prompt payment of contractors and subcontractors and authorizes contractors and subcontractors to stop work if they are not paid.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 28, Property Code, as follows:

Sec. 28.001. DEFINITIONS. Redefines "contractor" and "improve," and defines "owner's representative" and "properly performed or supplied." Redesignates subsequent sections.

Sec. 28.002. PROMPT PAY REQUIRED. Requires contractors and subcontractors to submit invoices periodically. Requires the owner to pay the amount to the contractor, less any amounts withheld as authorized by statute, not later than the 14th, rather than 45th, day after the owner receives the request if an owner or an owner's representative receives a written payment request from a contractor for an amount that is allowed to the contractor for properly performed work or suitably stored or specially fabricated materials. Requires a contractor who received a payment under Subsection (a) or otherwise from an owner in connection with a contract to improve real property to pay each of its subcontractors the portion of the owner's payment that is attributable to properly performed work or suitably stored materials by that subcontractor, rather than attributable to suitably stored materials by that subcontractor if payment for stored materials is provided for in the contract. Makes conforming and nonsubstantive changes.

Sec. 28.003. EXCEPTION FOR GOOD FAITH DISPUTE; WITHHOLDING. Authorizes a party disputing an obligation to pay in good faith to withhold from the payment owed not more than 100, rather than 110, percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due.

Sec. 28.004. INTEREST ON OVERDUE PAYMENT. Provides that an unpaid amount bears interest at the rate of 2½ percent each month.

Sec. 28.005. ACTION TO ENFORCE PAYMENT. Requires post-judgment interest to be the higher of the amount provided in this section or the amount otherwise provided by law.

Sec. 28.006. NO WAIVER. Makes a conforming change.

Sec. 28.007. LEGAL CONSTRUCTION. Makes no change.

Sec. 28.008. EXCEPTION FOR FAILURE OF LENDER TO DISBURSE FUNDS. Makes a conforming change.

Sec. 28.009. RIGHT TO STOP WORK. Authorizes a contractor or subcontractor to suspend performance of a contract if certain conditions are met. Sets forth procedures for suspension of performance.

Sec. 28.010. DIRECT ACTION BY SUBCONTRACTOR AGAINST OWNER. Sets forth actions the contractor or subcontractor is authorized to take if the owner has not paid an undisputed amount within prescribed time limits.

Sec. 28.011. INTEREST CHARGES NOT USURY. Provides that interest charged in compliance with or attempted compliance with this chapter is not usurious.

SECTION 2. Amends Sections 2251.001(2) and (7), Government Code, to redefine "governmental entity" and "subcontractor."

SECTION 3. Amends Section 2251.002(a), Government Code, to provide that, except as provided by Section 2251.042, this chapter does not apply to a payment made by a governmental entity, vendor, or subcontractor in certain circumstances.

SECTION 4. Amends Chapter 2251A, Government Code, by adding Sections 2251.004-2251.006, as follows:

Sec. 2251.004. WAIVER PROHIBITED. Prohibits the provisions of this chapter from being waived by contract or otherwise.

Sec. 2251.005. INTEREST NOT USURIOUS. Provides that interest charged in accordance with or attempted compliance with this chapter is not usurious.

Sec. 2251.006. TIME FOR SUBMITTING INVOICES UNDER CERTAIN CONTRACTS. Provides that this section applies only to the submission of invoices under a contract with a governmental entity to improve real property or to perform construction of maintenance services. Requires a vendor to submit invoices to the governmental entity periodically, but no less often than monthly, for certain items. Requires a subcontractor to submit invoices to the vendor periodically, but no less often than monthly, for certain items.

SECTION 5. Amends Sections 2251.021(a) and (b), Government Code, to provide that a payment by a governmental entity is overdue on the 15th day, rather than the 31st day, after the later of certain events. Deletes a provision that applied this provision to a contract executed on or after September 1, 1987. Makes a conforming change.

SECTION 6. Amends Section 2251.022, Government Code, to make conforming changes.

SECTION 7. Amends Section 2251.023, Government Code, to require a subcontractor who receives a payment from a vendor to pay its subcontractor the appropriate share of the payment, plus any interest, not later than the 7th day, rather 10th day, after the date the subcontractor receives the payment. Makes conforming changes.

SECTION 8. Amends Section 2251.025, Government Code, to provide that an overdue payment bears interest at the rate of 2½ percent, rather than 1 percent, each month. Provides that, in the

event of a lawsuit, post-judgment interest on an overdue payment is the higher of the amount provided by this section or the amount otherwise provided by law. Make a conforming change.

SECTION 9. Amends Section 2251.026, Government Code, as follows:

Sec. 2251.026. New heading: **LIABILITY FOR THE PAYMENT OF INTEREST BY GOVERNMENTAL ENTITY**. Provides that if the payment the originating governmental entity, rather than state agency, owes is not mailed or electronically transmitted before the payment is overdue, the governmental entity is liable for an interest payment that accrues under this chapter.

SECTION 10. Amends Section 2251.027, Government Code, as follows:

Sec. 2251.027. New heading: **PAYMENT OF INTEREST BY GOVERNMENTAL ENTITY**. Makes conforming changes.

SECTION 11. Amends Section 2251.028, Government Code, to require the interest to be paid at the time the principal payment is made for goods and services, and a petition or bill is not required for the interest to be paid.

SECTION 12. Amends Section 2251.042, Government Code, as follows:

Sec. 2251.042. **DISPUTED PAYMENT**. Authorizes a party disputing its obligation to pay, if there is a bona fide dispute concerning the amount owed by certain parties, to withhold from the payment owed not more than 100 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due. Requires a governmental entity to notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 15th, rather than 21st, day after the date the entity receives the invoice. Provides that, if a dispute is resolved in favor of the vendor or subcontractor and the vendor or subcontractor is awarded all or part of its claim, the vendor or subcontractor is entitled to receive interest as provided in this chapter on the unpaid balance of the invoice beginning on the date under Section 251.021, 2251.02, or 2251.023 that the payment for the invoice is overdue. Makes conforming changes.

SECTION 13. Amends Section 2251.043, Government Code, to make a conforming change.

SECTION 14. Amends Chapter 2251C, Government Code, by adding Sections 2251.044 and 2251.045, as follows:

Sec. 2251.044. **RIGHT TO STOP WORK**. Sets forth conditions under which a vendor and any subcontractor of that vendor may suspend performance of their contracts. Sets forth procedures to be followed during a suspension of performance.

Sec. 2251.045. **DIRECT ACTION BY VENDOR OR SUBCONTRACTOR AGAINST GOVERNMENTAL ENTITY**. Sets forth actions the vendor or subcontractor is authorized to take if a governmental entity has not paid the vendor the undisputed amount within the time limits prescribed by this chapter.

SECTION 15. Repealer: Section 2251.041, Government Code (Claim for Interest Imposed Against State Agency).

SECTION 16. Effective date: September 1, 1997.  
Makes application of this Act prospective.

SECTION 17. Emergency clause.