

BILL ANALYSIS

Senate Research Center

H.B. 1522
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Economic Development
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Engrossed

DIGEST

In the process of improving property, a general contractor pays the involved contractors, subcontractors, and suppliers after receiving an initial payment from an owner. Typically, the reason for any non-payment to these involved parties is due to the general contractor not receiving payment from the owner. In the event that payment is not received, the subcontractors, who may be responsible for more than 80 percent of the work, are still required to pay for labor and materials which can force the subcontractors to borrow from a lender in order to pay workers and suppliers. H.B. 1522 would increase the cash flow on construction projects by requiring monthly billings, and would authorize contractors or subcontractors to withhold work performance, if they have not yet been paid 10 days after notifying the owner or contractor.

PURPOSE

As proposed, H.B. 1522 increases prompt payment for work performed by contractors or subcontractors on certain real property.

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 Section 28.002, Property Code, to require an owner to pay the amount to the contractor, less any amount withheld as authorized by statute, rather than statutory offense, no later than the 35th day, rather than 45th day, after the date the owner receives the request, if an owner or a person authorized to act on behalf of the owner receives a written payment request from a contractor for an amount that is allowed to the contractor under the contract for properly performed work or suitably stored or specially fabricated materials. Requires a contractor who receives 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 work properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, rather than if payment for stored materials is provided for in the contract. Makes conforming changes.

SECTION 2. Amends Section 28.003, Property Code, to authorize the owner, contractor, or subcontractor that is disputing its obligation to pay or the amount of payment to withhold from the payment owed no more than 110 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due, if a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract of reconstruction of or improvements to, a detached single-family residence, duplex, triplex, or quadruplex. Authorizes the owner, contractor, or subcontractor that is disputing its obligation to pay or the amount of payment to withhold from the payment owed no more than 100 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due, if a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract of construction of or improvements to real property, excluding a detached single-family residence, duplex, triplex, or quadruplex. Makes conforming changes.

SECTION 3. Amends Section 28.008, Property Code, to require the date of payment required of the owner pursuant to Section 28.002(a) to change from the 35th day, rather than 45th, after the date the owner receives the payment request to the fifth day after the date the owner receives loan proceeds, in the event that certain conditions exist. Makes conforming changes.

SECTION 4. Amends Chapter 28, Property Code, by adding Sections 28.009 and 28.010, as follows:

Sec. 28.009. RIGHT TO SUSPEND WORK. Authorizes the contractor or any subcontractor to suspend contractually required performance the 10th day after the date the contractor or subcontractor gives the owner and the owner's lender written notice informing the owner and lender that payment has not been received, and stating the intent of the contractor or subcontractor to suspend performance for nonpayment, if an owner fails to pay the contractor the undisputed amount within the time limits provided by this chapter. Requires the contractor or subcontractor to give the owner's lender the written notice only if certain conditions exist, for purposes of Subsection (a). Provides that a contractor or subcontractor who suspends performance as provided by this section is not subject to certain conditions. Requires a notification that a good faith dispute for payment exists provided under Subsection (c) to include a list of specific reasons for nonpayment. Entitles the subcontractor to a reasonable opportunity to cure the listed items, or offer a reasonable amount to compensate for listed items that cannot be promptly cured, if a reason specified includes labor, services, or materials provided by a subcontractor that are not provided in compliance with the contract. Provides that this section does not apply to a contract for the construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex, or a contract to improve real property for a governmental entity. Provides that the rights and remedies provided by this section are in addition to rights and remedies provided by this chapter or other law.

Sec. 28.010. EXEMPTION FOR MINERAL DEVELOPMENT AND OILFIELD SERVICES. Provides that this chapter does not apply to certain agreements. Defines "agreement," and "well or mine services."

SECTION 5. Effective date: September 1, 1999.

Makes application of this Act prospective.

SECTION 6. Emergency clause.