

SUBJECT: Prohibiting contractual transfer of contractor liability to subcontractors

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 5 ayes — T. Hunter, Hilbert, Culberson, Moffat, Zbranek

0 nays

4 absent — Alvarado, Hartnett, Sadler, Tillery

WITNESSES: For — Jim Reynolds and James N. Letsos, III, Mechanical Contractors Association; Richard Bruns, American Subcontractors Association, Texas Terrazzo Contractors Association; Raymond Risk, American Subcontractors Association, Associated Builders and Contractors; Stephanie Stromberg, Independent Electrical Contractors; Steve Stagner, Consulting Engineers Council of Texas; Larry G. Scrivner.

Against — None

DIGEST: CSHB 2443 would prohibit a contractor from transferring to a subcontractor, in a contract involving improvements to real property, the contractor's liability for damages arising from its own negligence or its duty to defend against a claim or action.

CSHB 2443 would not affect the liability of a general contractor under:

- Chapter 33 of the Civil Practices and Remedies Code, governing comparative negligence and joint and several liability;
- any right of contribution;
- an insurance contract; or
- workers' compensation laws.

The bill would add Chapter 145 to the Civil Practices and Remedies Code, which would apply to contracts entered into after the bill's effective date, September 1, 1995. Contracts entered into before the effective date would be construed under existing law even if the negligent act occurred after the effective date.

**SUPPORTERS  
SAY:**

In contracts for construction projects, general contractors may require subcontractors to assume the liability for the negligence of other contractors. This practice has become so common that it is often standardized into contracts. This is especially unfair when the subcontractor may have not been at the job site for several months before the accident. This legislation would not excuse the subcontractor from any liability for its own negligence, but would merely ensure that the general contractor and the other subcontractors retained responsibility for their own negligent actions.

This legislation would not affect the recovery of any injured party, nor would it affect any contractor's liability under joint and several liability laws, no matter how those laws may be amended by this Legislature.

**OPPONENTS  
SAY:**

This legislation only addresses contracts between general contractors and subcontractors. The element missing is the contract between the owner and the general contractor. Owners would not be prohibited from passing the liability for their negligent actions to the general contractor. The problem with the current system is that the subcontractor bears the burden of any negligence; CSHB 2443 would merely pass the burden to the general contractor.

**NOTES:**

The committee substitute removed a section of the original bill that would have stated that every party to a contract to improve real property was liable for only those negligent acts performed by that party.

SB 757 by Lucio, pending in the Senate Economic Development Committee, is identical to the original version of HB 2443.

A related bill, HB 2279 by Combs, et al., pending in the House State Affairs Committee, would relieve the liability of a property owner or general contractor if the injured party was an employee of a subcontractor, the employee was covered by workers' compensation and the employee received workers compensation benefits.