

- SUBJECT:** Prompt payment for contractors and subcontractors
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley
0 nays
- WITNESSES:** For —Gary Boldt, Texas Association of Builders and Contractors; David Pinkus, Small Business United of Texas; Bob Richards, TD Industries; Raymond Risk, Texas Construction Association; Jim Sewell, Associated General Contractors of Texas, Building Branch
Against —Debora Kerstein, Texas Association of Builders; Keller W. Webster
On —David Mintz, Texas Apartment Association
- BACKGROUND:** Current law requires owners to pay contractors within 45 days of receiving a request in writing. When engaged in construction, an owner may take out a loan to pay for all or part of the costs.
Chapter 28 of the Property Code defines an "owner" as a person or entity, other than a governmental entity, with an interest in real property being improved; a "subcontractor" as a person who supplies labor or material to a contractor or another subcontractor in connection with a contract to improve real property; and a "contractor" as a person who contracts to perform construction services for an owner.
- DIGEST:** CSHB 1522 would require a contractor to submit invoices to a property owner at least monthly for goods or services provided by the contractor or subcontractor. It would require a subcontractor to submit invoices at least monthly to the contractor. It would require the owner to pay the contractor within 35 days of written request for payment.
The monthly-invoice requirement would not apply to projects involving a detached, single-family residence, duplex, triplex, or quadruplex. Vendors

and subcontractors would be required to submit invoices periodically, but no less often than monthly, to government entities.

The contractor or subcontractor could seek to recover payment for labor, services, or materials, plus reasonable damages, if an owner failed to pay an amount not in dispute within the specified time period. This cause of action could begin the 10th day after a contractor or subcontractor gave written notice of intent to seek damages. The owner could offset payment required for damages that did not comply with the contract requirements.

A contractor could agree to indemnify or defend an owner against a cause of action brought by a subcontractor. A subcontractor could agree to indemnify or defend an owner against a cause of action brought by a contractor.

CSHB1522 also would establish a “right to suspend work” if an owner failed to pay a contractor an undisputed amount on time. The bill would allow a contractor or subcontractor to suspend work required under contract on the 10th day after written notice was submitted to the owner and the owner’s lender. The notice would have to inform both the owner and the lender that payment had not been received and state the intent of the contractor or subcontractor to suspend work for nonpayment.

A contractor or subcontractor suspending work would not be required to supply further labor, services, or materials until paid. They would not be responsible for damages resulting from suspension if not notified in writing that payment had been made, or that a good-faith dispute existed over payments due. Such a notification would have to include specific reasons for nonpayment. The subcontractor would be entitled to correct or offer reasonable compensation for the problems.

The owner’s lender would be given written notice of work suspension only if a lender had remitted funds for a loan obtained for all or part of the construction project, had posted a prominent sign on the project site stating the lender’s name, address, and the person to whom any notice should be sent; and within 10 days of starting construction the owner or lender had mailed the contractor or subcontractor a copy of that notice that they actually received; and the loan was evidenced by a promissory note secured by a deed of trust recorded in county real property records, and was not for acquisition of personal property or secured only by a security instrument.

A contractor receiving payment would be required to pay each subcontractor a suitable portion for work properly performed or materials provided according to contract. Subcontractors, in turn, would have to do the same with their subcontractors.

A “good-faith” dispute would include a dispute regarding whether work was performed properly. The disputing party would be allowed to withhold no more than 110 percent of the difference between the amounts the two parties claimed was due in a good-faith dispute over a contract at a detached, single-family residence, duplex, triplex, or quadruplex. In good-faith disputes over construction contracts at other real property, the disputing party would be allowed to withhold no more than 100 percent of the difference between the disputed amounts.

The bill would take effect on September 1, 1999. It would apply only to contracts or agreements entered into on or after the effective date.

SUPPORTERS
SAY:

CSHB 1522 would encourage prompt payment for goods and services provided by contractors, subcontractors, or suppliers in the construction trade. These providers often are not paid in a timely manner for work that has already been performed in good faith. The reason for nonpayment is rarely defective or incomplete work. Instead, it is because owners choose not to pay general contractors promptly.

Standard language in contracts makes contractors and subcontractors liable for damages resulting from unfinished work. Thus, they are reluctant to stop work when even when payment is long overdue. This bill would give them their own cause of action in the event that an owner has not paid on time.

After receiving the initial payment from the owner, the general contractor must pay other contractors, subcontractors, and suppliers. When payment is not received in a timely manner, subcontractors remain responsible for labor and material costs, usually paid weekly. Subcontractors are sometimes forced to borrow from a lender in order to pay their laborers and suppliers.

Subcontractors often are small business owners. When an owner delays payment, the small business owner’s livelihood is threatened. The current

system reinforces this kind of behavior and often prevents small businesses from competing for other projects.

**OPPONENTS
SAY:**

Owners often pay invoices through a central accounting office nowhere near the construction site. It even may be done in a different state. It takes time to mail an invoice to a home office, to process checks, and to send them to the contractor. The current 45-day time frame is not unreasonable and should be left unchanged.

Accounting departments may send out checks once or twice a month. Reducing the time frame in which checks must be mailed might require these companies to more staff at increased expense.

CSHB 1522 could unintentionally affect oilfield contracts. These contracts almost always involve a contingency, providing for payment only when oil is found. The language in the bill could force drillers to bill for services monthly even for dry holes.

**OTHER
OPPONENTS
SAY:**

Current law requires owners to pay contractors within 45 days. Requiring a payment to be made within 35 days and adding a 10-day notice before they could stop work would mean that contractors still would not get relief or be paid within 45 days.

NOTES:

The committee substitute would exclude contracts for construction or improvement of detached single-family residences, duplexes, triplexes, or quadruplexes. It changed the required pay period in the original version and added provisions for good-faith disputes. It would require that an owner's lender receive notice of an intent to stop work, but only in certain circumstances. In disputes over residential property, 110 percent, rather than 100 percent, of the difference between the two claims could be withheld.

The companion bill, SB 1483 by Armbrister, has been referred to the Senate on State Affairs Committee.