

- SUBJECT:** Revising mechanic's, contractor's, and materialmen's liens
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 9 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Solomons, Woolley  
0 nays
- WITNESSES:** *(On original bill:)*  
For — Robert Bass, Lumbermen's Association of Texas; George Lewis, Texas Association of Builders; Raymond Risk, Texas Construction Association  
Against — Thomas Shiels
- BACKGROUND:** Contractors, subcontractors, and suppliers of labor and materials secure credit by issuing mechanic's and materialmen's liens. Such liens use the property being improved as collateral for payment on a construction contract. Property Code, chapter 53 establishes who is entitled to a lien, procedures for perfecting a lien, and what actions may be taken after a lien is perfected. If a contractor, subcontractor, or supplier used in the construction, repair, or improvement of real property is not paid, a lien may be executed. If notice requirements for such liens are met and the debt is not paid, the property subject to the lien may be foreclosed.
- DIGEST:** CSHB 2054 would amend the requirements and procedures for filing a mechanic's, contractor's, or materialmen's lien.

**Deadline changes.** The bill would require that within five days of filing a lien affidavit with a county clerk — as opposed to within one day under current law — the filer would have to send a copy of the affidavit to the property owner by registered or certified mail.

The bill would change the deadlines for beginning a lawsuit to foreclose a lien. For all but residential properties, the deadline for beginning a suit would two years after the last day the claimant could have filed the lien affidavit or one year after termination or abandonment of the work done under the

original contract, whichever date was later. The deadline to begin a suit involving a residential construction project would be one year after the last day the claimant could have filed the lien affidavit or one year after completion, termination, or abandonment of the work, whichever was later. Current law specifies the first alternative deadlines as two years or one year after the date the claimant files the lien affidavit.

**Prescribed language.** CSHB 2054 would change the prescribed language of a disclosure statement provided to the owner by the contractor. The disclosure statement would have to specify that the contractor is not required to supply a written list of subcontractors and suppliers if the owner signed a written waiver of rights to receive that information. The statement would have to note that each time a contractor requested payment from the owner or the owner's lender, the contractor would have to furnish a disbursement statement listing the name and address of each subcontractor or supplier that the contractor intends to pay with the requested funds. The prescribed language also would be amended to specify that if the owner chose not to withhold 10 percent of payment that otherwise would be made to a contractor who had completed, terminated, or abandoned work — called “statutory retainage” — and if the contractor failed to pay another party's timely and valid claim against that work, the owner could be subject to a lien up to the amount the owner failed to withhold.

CSHB 2054 would allow a property owner to waive in writing the right to receive the list of subcontractors and suppliers or other required updated information. The waiver could be included in the residential construction contract. The bill would prescribe the language and appearance of the waiver.

**Disbursement statement.** When requesting payment for construction of residential improvements, the original contractor would have to provide the owner with a disbursement statement that could include any information agreed to by the owner and contractor but would have to include the name and address of each subcontractor entitled to be paid by the contractor. The contractor would have to deliver the disbursement statement in a manner agreed to in writing by the owner and contractor or to send the statement by first-class mail or personal delivery. The statement would have to be provided at the time of a payment request, not periodically as required by current law. A contractor's failure to comply with the disbursement statement requirements would not invalidate a lien.

The bill would define “completion” of an original contract as the actual completion of work, including any extras or change orders reasonably required or contemplated under the original contract, other than warranty work or replacement or repair of the work performed in the contract.

The bill would take effect September 1, 1999, and would apply only to claims arising under an original contract entered into on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2054 would clarify existing law on contractor’s, mechanic’s, and materialmen’s liens. Because of confusion about current law, most of the building industry is noncompliant without knowing it. CSHB 2054 would help honest contractors comply with the law.

Currently, the Texas Constitution and the Property Code differ on when a lawsuit to claim a lien must be filed. This bill would specify the proper time frame in the Property Code.

The bill would allow consenting parties to waive disclosure notices required under current law. The current requirements burden small businesses with administrative tasks that often are unnecessary and unimportant.

The current requirement that the contractor mail a copy of a lien affidavit to the property owner within one business day after filing the affidavit is too restrictive. An innocent oversight on the part of a contractor ultimately could allow an owner to contest a lien successfully. Five days would be a more reasonable time frame.

The current requirement to provide the property owner with a list of subcontractors before any work begins can lead to the disclosure of proprietary information. Knowing the potential subcontractors, owners can bypass general contractors and hire the subcontractors themselves. CSHB 2054 would allow the owner to waive the right to receive this list.

**OPPONENTS  
SAY:**

No apparent opposition.

NOTES:           The committee substitute amended the original bill to specify the deadlines for filing suit to foreclose a lien and by removing a reference to a mechanic's lien in that section. The substitute also modified the prescribed language in the disclosure statement regarding retainage