

SUBJECT: Requiring certain information on performance and payment bonds

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Wolens, S. Turner, Bailey, Brimer, Counts, Craddick, Danburg
Hunter, Longoria, McCall, McClendon, Merritt

0 nays

3 absent — Hilbert, D. Jones, Marchant

WITNESSES: For — Raymond Risk, Texas Construction Association; *Registered but did not testify*: Shannon Noble, Texas Air Conditioning Contractor Association

Against — None

BACKGROUND: Government Code, sec. 2253.021 requires a prime contractor engaged in a public work contract with a governmental entity to execute a performance bond if the contract exceeds \$100,000 and a payment bond if the contract exceeds \$25,000. The performance bond is for the benefit of the entity awarding the contract. The payment bond is for subcontractors providing material or labor to the prime contractor or subcontractors.

Property Code, ch. 53 governs mechanic's, contractor's, or materialman's liens for private contracts. Subchapter I sets out provisions for a general contractor to furnish a bond to pay liens or claims by subcontractors.

Insurance Code, art. 1.35D requires the Texas Department of Insurance (TDI) to maintain a toll-free telephone number to facilitate distribution of certain information maintained by the department.

DIGEST: CSHB 409 would require that any bond required for a public work contract or furnished by a contractor to pay liens or claims on a private contract display prominently on the bond or an attachment:

! the name, mailing address, physical address, and telephone number of the surety company to which any claim should be sent; and

- ! TDI's toll-free telephone number and a statement that the address of the surety company could be obtained by calling the toll-free number.

Upon written request by a subcontractor, the prime contractor would have to provide the name of the surety issuing the bond and the toll-free telephone number, along with the name and address of the governmental entity and a copy of the bonds, which the contractor must provide under current law.

Upon application by a person with an affidavit stating that the person had supplied subcontracting work for which they had not been paid or had been sued on a payment bond, the governmental entity would have to provide:

- ! a certified copy of the payment bond and any attachments;
- ! the public work contract for which the bond was given; and
- ! the toll-free telephone number.

A person could provide notice of a claim to the surety — as required for public work contracts or for a bond furnished by a contractor to pay liens or claims on a private contract — by mailing notice to the surety at the address stated on the bond or attachment, on file with TDI, or at any other address allowed by law.

The bond or attachment would have to display clearly and prominently:

- ! the name, mailing address, physical address, and telephone number of the surety company; or
- ! the toll-free telephone number and a statement that the address of the surety company could be obtained by calling the toll-free number.

This bill would take effect September 1, 2001. The requirement for information to be displayed on a bond or an attachment would apply only to bonds issued after that date.

SUPPORTERS
SAY:

CSHB 409 would make it easier for a bond claimant on a public or private construction contract to obtain information on where to file a bond claim. Currently, bonds do not have to display contact information for the surety company issuing the bond. This notice requirement especially would help small business subcontractors that might lack the resources and

sophistication to locate a surety company that issued a bond on which they wished to file a claim.

CSHB 409 would not overburden surety companies. They would not have to reprint bond forms because their contact information could be displayed on an attachment to the bond. A surety company that moved to a new location could be reached by a claimant calling TDI's toll-free telephone number.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The substitute differs from the filed version of the bill by providing for contact information to be displayed on an attachment to a bond. It also would allow TDI's toll-free telephone number to be displayed as an alternative to the contact information for the surety company.

A similar bill in the 76th Legislature in 1999, HB 3704 by Shields, passed the House on the Local, Consent, and Resolutions Calendar, but died in the Senate late in the session.