

BILL ANALYSIS

Senate Research Center
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S.B. 1274
By: Wentworth
Economic Development
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As Filed

DIGEST

Currently, the Property Code does not adequately protect subcontractors from the ability of general contractors and owners to withhold the payment of statutory retainage without incurring a penalty. When no legitimate threat exists where a retainage will be used to satisfy a perfected claim by a protected class under Chapter 53, Property Code, subcontractors are not protected from a unilateral decision by a general contractor or owner to withhold or delay statutory retainage payments. "Retainage" means a percentage of the contract price is retained by an owner during the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work is completed. The retained funds secure payment to those who furnish material and labor for any contractor or subcontractor in the performance of work. S. B. 1274 would set forth procedures involving the retainage of payments to real property construction subcontractors.

PURPOSE

As proposed, S.B. 1274 sets forth procedures involving the retainage of payments to real property construction subcontractors.

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 Chapter 53A, Property Code, by adding Section 53.004, as follows:

Sec. 53.004. RETAINAGE. Prohibits a person contracting with a subcontractor to perform labor or furnish labor, materials, or specially fabricated materials under or by virtue of a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor from requiring the subcontractor to execute an agreement providing for retainage in a percentage greater than the retainage percentage in the original contract. Provides that any retainage withheld as provided by this chapter accrues interest at six percent each year payable to the person entitled to receive the retained funds.

SECTION 2. Amends Section 53.081(c), Property Code, to authorize an owner to withhold funds immediately on receipt of the notice, if notice is sent under Section 53.057 or 53.252(c). Deletes text authorizing an owner to withhold funds immediately on receipt of a copy of the claimant's affidavit prepared in accordance with Sections 53.052 through 53.055.

SECTION 3. Amends Section 53.103, Property Code, to provide that a claimant, except as provided by Subsection (b), has a lien on the retained funds, if the claimant performs certain actions. Provides that, if a claimant sends notice under Section 53.057 or 53.252(c), the claimant has a lien on retained funds.

SECTION 4. Amends Section 53.252(c), Property Code, to require notice to be sent as provided by Section 53.057, if applicable, and the notice to the owner must state certain conditions to authorize an owner to withhold funds under Subchapter D.

SECTION 5. Effective date: September 1, 1999.
Makes application of this Act prospective.