

BILL ANALYSIS

Senate Research Center

H.B. 548
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Business & Commerce
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Engrossed

DIGEST AND PURPOSE

Texas law requires a contractor to secure a payment bond and a performance bond on all public projects. H.B. 548 amends the Insurance Code to provide that the business of insurance includes the actions of a surety company, and sets forth provisions relating to the duties of a commercial surety.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance is SECTION 1 (Sec.5. Chapter 7, Insurance Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 7, Insurance Code, by adding Article 7.20 as follows:

Art. 7.20. CONSTRUCTION PAYMENT BOND OF SURETY COMPANY; PROMPT PAYMENT

Sec. 1. DEFINITIONS. Defines “claimant,” “construction payment bond,” “notice of claim,” and “surety company.”

Sec. 2. ACKNOWLEDGMENT AND INVESTIGATION OF CLAIM. (a) Requires a surety company that has issued a construction payment bond to, not later than the 15th day after the date of receipt of notice of claim under the bond take certain actions.

(b) Provides that nothing in this article exempts a claimant from compliance with any applicable statutory or contractual notice requirement.

(c) Provides that if the construction payment bond provides an address of the surety company to which claims should be submitted, the notice of claim is effective on receipt of the notice at that address.

Sec. 3. ACCEPTANCE OR REJECTION OF CLAIM. (a) Requires a surety company, except as provided by Subsection (c) of this section, to notify a claimant in writing of the acceptance or rejection of a claim not later than the 30th day after the date the surety company receives all documents, items of information, accountings, statements, and forms requested by the surety company as provided by Section 2 of this article.

(b) Provides that if the surety company rejects all or part of the claim, the notice required by Subsection (a) of this section must state in specific terms the reasons for the rejection known to the surety company at that time.

(c) Requires the surety company, if the surety company is unable to accept or reject the claim within the period specified by Subsection (a) of this section, to provide written notice to the claimant, not later than the date specified under Subsection (a), that the

surety company is unable to accept or reject the claim within that period. Requires the notice provided under this subsection to meet certain requirements.

(d) Requires the surety company, not later than the 30th day after the date a surety company notifies a claimant under Subsection (c) of this section, to notify the claimant in writing of the acceptance or rejection of the claim. Requires the surety company, if the surety company rejects all or part of the claim, to state in specific terms the reasons for the rejection known to the surety company at that time.

(e) Authorizes a surety company, in addition to any other contractual or statutory basis for denying a claim, to reject all or any part of a claim that is the subject of a legitimate dispute between the principal obligor and the claimant or for which the claimant has failed to provide supporting documents or information reasonably requested by the surety company.

(f) Authorizes the time limits provided by this section and Section 2 of this article to be varied by any statute requiring a construction payment bond.

(g) Provides that this section does not preclude a surety company from asserting any defense in any action brought by a claimant against the construction payment bond if a good faith effort is made to inform the claimant in accordance with this section of reasons for rejecting all or part of the claim.

Sec. 4. PAYMENT OF CLAIM. (a) Requires the surety company, if a surety company notifies a claimant under Section 3 of this article that the surety company accepts a claim or part of a claim, to pay the claim not later than the 15th day after the date of the notice.

(b) Requires the surety company, if payment of the claim or part of the claim is conditioned on the execution of a document or performance of an act by the claimant, to pay the claim not later than the seventh day after the date the surety company receives the executed document or evidence that the act has been performed.

(c) Provides that for purposes of this section, payment of a claim occurs when the surety company places the surety company's check or draft in the United States mail properly addressed to the claimant or the claimant's representative.

Sec. 5. RULES. Authorizes the Commissioner of Insurance (commissioner) to adopt rules enforcing this article in cases in which a surety company violates this article as a general business practice.

Sec. 6. CONSTRUCTION. (a) Requires this article to be construed to encourage prompt payment of just claims made under construction payment bonds of surety companies. Provides that this article does not foreclose any other remedy available to a claimant by law or contract.

(b) Prohibits this article from being construed to create a private cause of action; be a precondition to judicially enforcing obligations under a construction payment bond; diminish any other obligation of a surety company that exists by law; or prohibit a surety company from asserting a defense against a construction payment bond claim in a proceeding to enforce a claim.

Sec. 7. MODIFICATION PROHIBITED. Provides that any term contained in a construction payment bond that is inconsistent with this article is void.

SECTION 2. Effective date: September 1, 2001. Makes application of this Act prospective.