

BILL ANALYSIS

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By: Jackson
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DIGEST AND PURPOSE

Texas law requires a contractor to secure a payment bond and a performance bond on all public projects. Often a construction payment bond is issued by an insurance company performing the duties of a commercial surety (surety), with the contractor as the principal and the governmental entity contracting the construction or any subcontractor providing services may be the bond obligee. If the contractor defaults on completion of the project or payment for services rendered, the bond obligee may file suit against the surety to collect compensation. However, the Texas Supreme Court has ruled that there is no common law duty of good faith and fair dealing between the surety and the bond obligee comparable to that between a liability insurer and its insured. The court has further held that provisions regarding compensation of injuries sustained due to practices declared to be unfair or deceptive are inapplicable to a commercial surety. As a result, some commercial surety companies refuse to pay on a claim until the surety is sued, and then attempt to force a settlement with the bond obligee that favors the surety. As proposed, S.B. 548 provides 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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 7, Insurance Code, by adding Article 7.18, as follows:

Art. 7.18. CONSTRUCTION PAYMENT BOND OF SURETY COMPANY; PROMPT PAYMENT

Sec. 1. DEFINITIONS. Defines “Construction Payment Bond,” “claimant,” “notice of claim,” and “surety company.”

Sec. 2. NOTICE OF CLAIM. Requires a surety company that has issued a construction payment bond, not later than the 15th day after receipt of written notice of claim under the bond, to take certain actions. Requires that nothing in this Article excuse a claimant from compliance with any applicable statutory or contractual notice requirements. Requires the notice of claim, if the bond provides an address of the surety company to which claims should be submitted, to be effective upon its receipt at that address.

Sec. 3. ACCEPTANCE OR REJECTION OF CLAIMS. (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 the 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 in Section 2.

(b) Requires the notice required by Subsection (a) of this section, if the surety company

rejects all or any part of the claim, to state in specific terms the reasons for the rejection known to it 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. Sets forth certain requirements of the notice provided under this subsection.

(d) Requires a surety company, not later than the 30th day after the date the 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 reason for any rejection know to it at that time.

(e) Authorizes the surety company, in addition to any other contractual or statutory basis for denying a claim, to reject all or any part of a claim under certain circumstances.

(f) Authorizes the time limits set forth in Sections 2 and 3 of this article to be varied by any statute requiring the bond.

(g) Requires that nothing in this section preclude a surety company from asserting other defenses in any action brought by a claimant against the construction payment bond provided a good faith effort is made to inform the claimant of reasons for rejection in accordance with this Section.

Sec. 4. PAYMENT OF CLAIMS. Requires a surety company, if the 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. Requires the surety company, if the payment of the claim, or part of the claim, is conditioned on execution of a document or performance of an act by the claimant, to pay the claim not later than the seventh day after the surety company receives the executed document or evidence that the act has been performed. Provides that payment occurs, for the purposes of this Section, when the surety company places its check or draft in the United States mail properly addressed to the claimant or its representative.

Sec. 5. JURISDICTION OF THE DEPARTMENT. Provides that the Texas Department of Insurance is authorized to promulgate regulations enforcing this Article in the event a surety company violated this Article as a general business practice.

Sec. 6. CONSTRUCTION. Requires that this article be construed to encourage prompt payment of just claims made under construction payment bonds of surety companies and to not foreclose any other remedy available to a claimant by law or contract. Requires that this Article not be construed in certain manners.

Sec. 7. MODIFICATION PROHIBITED. Provides that any term contained within 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.