

BILL ANALYSIS

Senate Research Center

H.B. 2397
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State Affairs
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Engrossed

DIGEST AND PURPOSE

A contractor or subcontractor in the construction business can be placed in a position of financial jeopardy when required to pay workers and material suppliers regardless of whether payment has been received from the owner of the project or general contractor. In the private sector, contractors and subcontractors have the right to suspend work if they are not paid for work properly performed. However, there is no similar protection for contractors and subcontractors performing public work projects. H.B. 2397 extends the right to suspend work to contractors and subcontractors when a governmental entity is the project owner.

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 Section 2251.002(a), Government Code, by including an exception to the application of Subchapter B to a certain payment.

SECTION 2. Amends Subchapter A, Chapter 2251, Government Code, by adding Section 2251.004, as follows:

Sec. 2251.004. WAIVER. Prohibits a person from waiving any right or remedy granted by this chapter. Provides that a purported waiver of any right or remedy granted by this chapter is void.

SECTION 3. Amends Chapter 2251, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. REMEDY FOR NONPAYMENT

Sec. 2251.051. VENDOR REMEDY FOR NONPAYMENT OF CONTRACT. (a) Authorizes a vendor to suspend performance required under a contract with a governmental entity if certain conditions are met.

(b) Prohibits the vendor from suspending performance under this section before the later of the 10th day after the date the vendor gives notice under Subsection (a), or the day specified by Section 2251.053(b), if applicable.

(c) Provides that a vendor who suspends performance under this section is not required to supply further labor, services, or materials until the vendor is paid the amount provided for under this chapter, plus costs for demobilization and remobilization, or responsible for damages resulting from suspending work if the governmental entity with which the vendor has the contract has not notified the vendor in writing before performance is suspended that payment has been made or that a bona fide dispute for payment exists.

(d) Requires a notification under Subsection (c)(2) that a bona fide dispute for payment exists to include a list of the specific reasons for nonpayment. Provides that, if a reason specified is that labor, services, or materials provided by the

vendor or the vendor's subcontractor are not provided in compliance with the contract, the vendor is entitled to a reasonable opportunity to cure the noncompliance of the listed items, or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Sec. 2251.052. SUBCONTRACTOR REMEDY FOR VENDOR'S NONPAYMENT OF CONTRACT. (a) Authorizes a subcontractor of a vendor under a contract with a governmental entity to suspend performance required under the contract with the vendor if certain conditions are met.

(b) Requires a subcontractor who suspends performance under Subsection (a) to give the vendor written notice, a copy of which the subcontractor may provide the governmental entity with whom the vendor has a contract, containing certain information.

(c) Prohibits the subcontractor from suspending performance under this section before the later of the 10th day after the date the subcontractor gives notice under Subsection (a), or the date specified by Section 2251.053(b), if applicable.

(d) Provides that a subcontractor who suspends performance under this section is not required to supply further labor, services, or materials until the subcontractor is paid the amount provided for under the contract, plus costs for demobilization and remobilization, or responsible for damages resulting from suspending work if the vendor has not notified the subcontractor in writing before performance is suspended that payment has been made or the governmental entity has notified the vendor that a bona fide dispute for payment exists.

(e) Requires a notification under Subsection (d)(2) that a bona fide dispute for payment exists to include a list of the specific reasons for nonpayment. Provides that, if a reason specified is that labor, services, or materials provided by the subcontractor are not provided in compliance with the contract, the subcontractor is entitled to a reasonable opportunity to cure the noncompliance, or offer a reasonable amount to compensate for listed items for which noncompliance cannot be promptly cured.

Sec. 2251.053. HIGHWAY-RELATED CONTRACTS. (a) Provides that this section applies only to a contract entered into by the Texas Department of Transportation for the construction or maintenance of a highway or a related facility.

(b) Prohibits a vendor or subcontractor from suspending performance under Section 2251.051 or 2251.052 before the 20th day after a certain date.

(c) Requires a notice required under this subchapter and relating to a contract described by Subsection (a) to be sent by certified mail to certain persons.

Sec. 2251.054. NOTICES. (a) Provides that this section applies only to a notice or other written communication required by this subchapter.

(b) Requires a notice or other written communication to a governmental entity to be delivered to certain persons.

(c) Authorizes any notice or other written communication to be personally delivered to a person described by Subsection (b) or the person's agent, regardless of any other manner of delivery prescribed by law.

(d) Provides that if a notice or other written communication is sent by certified mail, the notice is effective on the date the notice or other written communication is deposited in the United States mail.

(e) Provides that if a notice or other written communication is sent by electronic means, the notice or other written communication is effective on the date the person designated or entitled to receive the notice or other written communication receives the notice or other written communication.

(f) Provides that if a notice or other written communication is received by the person designated or entitled to receive the notice or other written communication, the method of delivery of the notice or other written communication is immaterial.

Sec. 2251.055. RIGHTS AND REMEDIES NOT EXCLUSIVE. Provides that the rights and remedies provided by this subchapter are in addition to rights and remedies provided by this chapter or other law.

SECTION 4. Effective date: September 1, 2003.
Makes application of this Act prospective.