

BILL ANALYSIS

Senate Research Center
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S.B. 1720
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DIGEST AND PURPOSE

A contractor or subcontractor in the construction business can be 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 getting paid for work properly performed. However, there is no protection for contractors and subcontractors performing public work projects. As proposed, S.B. 1720 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 Subchapter B, Chapter 2251, Government Code, by adding Sections 2251.031 and 2251.032, as follows:

Sec. 2251.031. **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 10th day after the date the vendor gives notice under Subsection (a).

(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 good faith dispute for payment exists.

(d) Requires a notification under Subsection (c)(2) that a good faith dispute for payment exists to specify the reasons for nonpayment. Provides that, if a reason specified is that labor, services, or materials provided by the vendor or a subcontractor are not provided in compliance with the contract, the vendor or 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.

(e) Provides that the rights and remedies provided by this section are in addition to rights and remedies provided by this chapter or other law.

(f) Prohibits a person from waiving any rights or remedies granted by this section, by contract, or by any other means. Provides that any purported waiver of this section is void.

Sec. 2251.032. 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) Prohibits the subcontractor from suspending performance under this section before the 10th day after the date the subcontractor gives notice under Subsection (a).

(c) 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 that a good faith dispute for payment exists.

(d) Requires a notification under Subsection (c)(2) that a good faith dispute for payment exists to specify the 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.

(e) Provides that the rights and remedies provided by this section are in addition to rights and remedies provided by this chapter or other law.

(f) Prohibits a person from waiving any rights or remedies granted by this section by contract or by any other means. Provides that any purported waiver of this section is void.

SECTION 2. Effective date: September 1, 2003.
Makes application of this Act prospective.