

BILL ANALYSIS

Senate Research Center
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S.B. 295
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current Texas law, a lender on a construction project in Texas currently is not required to give any notice to a contractor or subcontractor on the project when a default on the construction loan or financing agreement occurs. Some parties assert that, without such notice, contractors, subcontractors, and suppliers continue to expend labor and materials on a project, unaware that the lender funding for the project has stopped and that payment for work and supplies may never be received.

As proposed, S.B. 295 amends current law relating to lender notice to contractors regarding a construction loan or financing agreement for the improvement of real property and related procedures for suspending contractors' and subcontractors' performance.

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 28, Property Code, by adding Section 28.0091, as follows:

Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS; SUSPENSION OF PERFORMANCE PENDING CURE. (a) Provides that this section applies only to a lender that provides financing through a construction loan or under a financing agreement for an improvement to real property for which the real property or improvement is collateral.

(b) Requires the contractor to, for an improvement to real property for which financing is provided as described by Subsection (a), provide to the lender the contractor's name, physical and mailing addresses and e-mail address, if available, and telephone number; and the name of the person to whom any notice under this section should be delivered.

(c) Entitles each contractor and subcontractor providing labor, materials, equipment, or services for an improvement described by this section to suspend contractually required performance without penalty or liability for damages if the lender suspends a disbursement of loan proceeds or ceases disbursements of loan proceeds to a borrower or property owner under the loan or financing agreement to which this section applies, except as provided by Subsection (f).

(d) Requires a lender to immediately notify the contractor identified under Subsection (b) of a suspension of a disbursement of loan proceeds or cessation of disbursements of loan proceeds described by Subsection (c), except as provided by Subsection (f).

(e) Requires a contractor, upon receipt of notice under Subsection (d), to immediately notify each of the contractor's subcontractors of the suspension of the disbursement of loan proceeds or cessation of disbursements of loan proceeds and

of the subcontractor's right under this section to suspend contractually required performance without penalty or liability for damages as a result of the suspension of the disbursement of loan proceeds or cessation of disbursements of loan proceeds.

(f) Provides that a lender is not required to give notice to a contractor under Subsection (d) with respect to a suspension of a disbursement of loan proceeds or cessation of disbursements of loan proceeds described by Subsection (c) if, before the lender suspends the disbursement of loan proceeds or ceases the disbursements of loan proceeds, a written agreement exists between the lender and the contractor that:

(1) provides for the continued performance by the contractor and for payment to the contractor in the event of a default by the borrower or property owner under the loan or financing agreement;

(2) provides for notice from the lender to the contractor that the borrower or property owner is in default under the loan or financing agreement;

(3) requires that, on the receipt of notice under Subdivision (2), the contractor immediately notify the contractor's subcontractors of the borrower's or property owner's default under the loan or financing agreement; and

(4) specifically states that subcontractors of the contractor are third-party beneficiaries of the lender's obligations under the agreement.

(g) Provides that a subcontractor is a third-party beneficiary of a lender's obligations under Subsection (d) with equal standing to a contractor to enforce remedies.

SECTION 2. Makes application of the change in law made by this Act prospective.

SECTION 3. Effective date: September 1, 2013.