

BILL ANALYSIS

Senate Research Center
86R23734 JES-F

H.B. 2856
By: Morrison (Kolkhorst)
Business & Commerce
5/13/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2856 amends current law relating to restrictions under disaster remediation contracts and creates a criminal offense.

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 Sections 58.001(1) and (2), Business & Commerce Code, as follows:

(1) Redefines "disaster remediation" to mean the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of existing improvements, rather than improvements, to real property performed because of damage or destruction to that property caused by a natural disaster.

(2) Redefines "disaster remediation contractor" to mean a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality (TCEQ) for the collection, transportation, treatment, storage, processing, or disposal of solid waste, but does not include an entity approved by the Internal Revenue Service as tax exempt under Section 501(c)(3), Internal Revenue Code of 1986, rather than other than a person who has a permit license, registration, or other authorization from TCEQ for the collection, transportation, treatment, storage, processing, or disposal of solid waste.

SECTION 2. Amends Section 58.003(b), Business & Commerce Code, as follows:

(b) Provides that a disaster remediation contractor:

(1) is prohibited from requiring a person to make a full or partial payment under a contract before the contractor begins work, unless the amount of such payment is held in escrow with an escrow officer who meets the requirements of Section 2652.001 (License and Bond or Deposit Required), Insurance Code, rather than is prohibited from requiring a person to make a full or partial payment under a contract before the contractor begins work; and

(2)–(3) makes no changes to these subdivisions.

SECTION 3. Amends Section 58.004, Business & Commerce Code, as follows:

Sec. 58.004. New heading: PENALTIES. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Provides that a disaster remediation contractor who violates Section 58.003(b)(1) or (2) (relating to prohibiting a disaster remediation contractor from requiring that the amount of any partial payment under the contract exceed an

amount reasonably proportionate to the work performed, including any materials delivered) commits an offense. Provides that an offense under this section is:

(1) a Class B misdemeanor if the offense was committed without the intent to defraud the person contracting for disaster remediation services; or

(2) a felony of the third degree if the offense was committed with the intent to defraud the person contracting for disaster remediation services.

(c) Provides that it is a defense to prosecution under this section if the disaster remediation contractor refunds any payment made in violation of Section 58.003(b)(1) or (2) not later than the 15th day following the receipt of a written demand alleging a violation of Section 58.003(b)(1) or (2) sent by certified mail to the disaster remediation contractor's last known business address or the address of the disaster remediation contractor's registered agent.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.