

Making it a crime for disaster contractors to require certain payments

HB 2856 by Morrison (Kolkhorst)

Digest

HB 2856 would have made it a crime for a disaster remediation contractor to require a person to make a full or partial payment under a contract before the contractor began work or for a disaster remediation contractor to require that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered. An offense would have been either a class B misdemeanor or a third-degree felony, depending on whether it was or was not committed with the intent to defraud the person contracting for services.

Governor's reason for veto

"House Bill 2856 attempts to address the very real problem of disaster-remediation contractors who take advantage of disaster victims. But it does so with a stiff criminal penalty in an area where civil remedies already exist, which could discourage well-intentioned, quality tradespeople from seeking work in Texas following a disaster. This could inadvertently harm victims and impede recovery. We must take a more measured approach to this issue — as was done in House Bill 2320, which I have signed into law this session. I look forward to working with the author next session."

Response

Rep. Geanie Morrison, the bill's author, said: "HB 2856 was the result of too many instances of property owners being taken advantage of in the aftermath of Hurricane Harvey by impostors intentionally targeting those in need with the intent to defraud them. However, this is an issue that arises during every major disaster across the nation. A simple Google search will start with a warning on the FEMA website of the prevalence of these scams that have been seen from Hurricane Katrina, wildfires in California, tornadoes in Oklahoma,

and flooding in our own state. The governor's Veto Proclamation stated he preferred a more measured approach as was seen in HB 2320, which requires a report from the Texas Department of Emergency Management on approaches to increase prosecutions of this alleged fraud. This issue was important enough to be mentioned in the governor's *Eye of the Storm* report where it noted, 'Smaller communities often didn't have the resources to investigate and prosecute alleged instances of fraud.' In one statement the governor acknowledges there needs to be an approach to get more prosecutions, but also acknowledges our smaller communities don't have the resources to do so.

"This issue would have been addressed by passing HB 2856 with the potential of a third-degree felony (only if the intent to defraud was proven in court). It is common practice in law to use higher penalties to deter criminals where resources may not be available and this would have been a major protection for smaller communities like District 30. In fact, the governor signed another bill of mine, HB 2321, that increases penalties for illegal oyster harvesting, a follow-up to HB 51 the previous session, with no mention of similar concerns even though they include felony penalties. I respectfully disagree with the governor's opinion that this penalty might deter quality tradespeople when this bill was well-vetted through both the House and Senate with multiple trade associations and no registered opposition. Having represented a district that was directly hit by Hurricane Harvey, I hope we do not experience any disasters in Texas prior to the next legislative session. This veto has unfortunately left property owners in our smaller communities vulnerable again for scammers who do not fear small time civil penalties and know we do not have the resources to prosecute them. I am happy to work with the governor's office moving forward to protect these vulnerable communities during their greatest time of need and pass much-needed legislation to fix this issue next session."

Sen. Lois Kolkhorst, the Senate sponsor, had no comment on the veto.

Notes

HB 2856 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.
