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Standardized Lien Release and Lien Waiver

HB 1456 by Orr, Senate Sponsor: Deuell

Mechanic's and materialman's liens help contractors, subcontractors, and suppliers collect money due to them for labor or materials they provide for construction projects. Some interested parties were concerned about the information being included in lien waivers (both conditional and unconditional), which resulted in disagreement among the parties regarding the terms of the lien waiver or release and subsequent delays in payments, the filing of additional liens, and even litigation. HB 1456 addressed this situation by creating standardized lien waiver and release forms.

HB 1456 amends current law relating to the waiver and release of a mechanic's, contractor's, or materialman's lien or payment bond claim and to the creation of a mechanic's, or contractor's lien, or materialman's lien for certain landscaping. It requires standardized lien release and lien waivers and prohibits a person from requiring a claimant or potential claimant to execute an unconditional waiver and release for a progress payment or final payment amount unless the claimant or potential claimant received payment in that amount in good and sufficient funds.

This bill would take effect January 1, 2012 and awaits the Governor's signature.

Retainage under Construction Contracts

HB 1390 by Deshotel and Bohac, Senate Sponsor: Estes

Current law requires the owner of a construction project to retain 10% of each payment to the general contractor for the benefit of the subcontractors working on the project. When the project is completed, the owner releases the retained funds to the general contractor, who passes them on to its subcontractors and suppliers. The retained funds (retainage) protect the subcontractors and suppliers from the possibility that a general contractor will go bankrupt without paying them.

In order to secure the right to be paid a portion of the retainage, a subcontractor must notify the owner that it is entitled to a portion of the retainage before the end of the fifteenth day of the second month after it begins work on the project and file a lien affidavit on the owner's property before the thirtieth day after the project's completion specifying the amount of retainage it is owed. The owner is prohibited from releasing the funds until 30 days after the completion.

In practice, the early date of the initial notice serves little purpose, since owners are statutorily required to retain the funds regardless of whether or not they have received notice. Subcontractors sometimes forget to send the initial notice to the owner and lose their rights, even though the funds were retained. The filing deadline for the lien affidavit also causes problems, because the statutory scheme requires subcontractors to encumber the property with a lien before the owner can release the funds to avoid the encumbrance. This is burdensome for owners who wish to sell the property quickly after the project's completion.

Finally, the date of completion, which triggers all of the statutory deadlines, is never clear, since no party has the duty or the ability under the statute to declare when completion has occurred. This creates problems for parties attempting to calculate the various statutory

deadlines. This bill amends and clarifies statutes relating to completion dates and notice requirements.

HB 1390 amends current law relating to retainage under certain construction contracts: The retainage claim accrues on the earliest of the last day of the month in which all work is completed or abandoned. Claimant must give owner notice of claim to retainage no later than 30 days after the deadline established above, if the claim is with a subcontractor, claimant must give both subcontractor and general contractor notice, and related liens must be filed no later than 40 days after the established deadline.

This bill would take effect September 1, 2011 and awaits the Governor's signature.

Sales Tax Exemption for Agriculture Use

HB 268 by Hilderbran, Senate Sponsor: Seliger

Current law allows purchasers to claim an exemption from sales tax for agriculture use at the time of purchase. Purchases are exempt based on how items purchased will be used, not based on the type of item purchased. In the course of a Texas Sales Tax Audit, the seller is held liable if the purchaser does not provide sufficient documentation about what and how the items purchased are being used in accordance with the law.

HB 268 amends current law to require purchasers claiming this exemption to apply for and receive a registration number issued by the Comptroller. In order to receive the exemption at the time of purchase, the purchaser must present the exemption number to the seller. The seller must verify that number and the number appear on all invoices claiming exemption. The Comptroller must allow for verification to occur online with verification good for four years or good through the uniform date, to be established by the Comptroller, on which all numbers must be re-verified. At the time of purchase, if a purchaser does not have an exemption number, the purchaser must pay sales tax but, upon approval and receipt of exemption number from the Comptroller, can apply for a refund of sales tax.

If the seller includes a verified exemption number on all transactions claiming exemption, the seller has demonstrated good faith and the purchaser assumes all responsibility for purchases that do not qualify.

This bill would take effect September 1, 2011 and awaits the Governor's signature.

Loser Pays

HB 274 by Creighton et al., Senate Sponsor: Huffman

This bill makes several improvements to current law. It tells the Texas Supreme Court to adopt rules for early dismissal of suits "that have no basis in law or fact." Courts would decide motions to dismiss before hearing evidence on the claims. If a motion to dismiss the case is granted, court costs and attorneys fees are awarded to the prevailing party.

The bill requires the Texas Supreme Court to adopt rules to promote the prompt, efficient, and cost-effective resolution of civil actions with less than \$100,000 in controversy.

Finally, if a settlement was rejected and jury verdict was for less than the offered settlement, this bill states that plaintiffs cannot recover more than the verdict amount, including costs and fees, essentially penalizing the plaintiff for not accepting the settlement.

This bill has been signed into law and takes effect September 1, 2011.

Increased Penalties for Organized Crime Theft

HB 2482 by Pena, Gallego, and Guillen, Senate Sponsor: Williams

This bill targets organized criminals by increasing penalties for theft, including penalties for disabling theft-deterrents and fire alarms. Increased penalties for theft include felony charge for merchandise valued between \$500 - \$1,500, third degree felony when valued between \$1,500 – \$20,000, second degree felony when valued between \$20,000 - \$100,000, and first degree felony when valued over \$100,000.

This bill makes it a crime to receive the stolen goods; intentionally conduct, promote, or facilitate the corrupt activity; or be employed by or associated with the enterprise by engaging in the activity.

This bill would take effect September 1, 2011 and awaits the Governor's signature.

Miscellaneous Notes

HB 1860 (Deshotel) relating to removables was voted out of committee but was not heard on the house floor. LAT EVP Barbara Douglas was instrumental in keeping the language in this bill from being included in HB 1456 (an attempt by the authors to push it through along with the lien waiver bill).

SB 1160 (Seliger) clarifies in Texas law that a landowner owes no duty of care or is liable for injuries to a trespasser. This bill was signed into law on May 20, 2011 and is effective immediately.

HB 262 (Hilderbran, Phil King, Murphy, Callegari, Bohac) would have extended the \$1 million total revenue exemption for the Texas Franchise Tax. This bill did not pass, so the exemption drops, as is current law, to those businesses with less than \$600,000 in gross receipts. It was testified that this lower threshold adds 28,000 more businesses to the franchise tax rolls and create an additional \$148 million tax revenue for the State.