

HB 2139 -- CONSTRUCTION CONTRACTS

SPONSOR: Falkner

This bill governs the enforceability of and requirements for construction contracts, as defined in the bill.

A construction contract shall be void and unenforceable if it provides that:

- (1) A party may withhold payment to another party for either an amount in excess of the amount in dispute or for claims one party has against another party relating to or arising out of another contract or incident between those parties;
- (2) A party cannot suspend performance or terminate the construction contract if another party fails to make prompt payments according to the construction contract terms;
- (3) A party continues to work or supply, furnish, or provide materials, labor, or services if that party is not paid pursuant to the construction contract terms;
- (4) A party performs, provides, or furnishes extra or additional construction work not included in the original scope of work without an agreement made and entered into before performing, providing, or furnishing the extra or additional work regarding the amount to be paid or the methodology for determining the amount to be paid;
- (5) A party waives or releases any rights it has under the construction contract or by operation of law to recover any amount in dispute as a condition for receiving payment of an amount not in dispute;
- (6) A party may take certain adverse actions as specified in the bill;
- (7) The construction contract is subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from the construction contract to be conducted in another state; and
- (8) The payment by the owner to the contractor, or the payment by the contractor to a subcontractor or supplier, or the payment by a subcontractor to a sub-subcontractor or supplier at any tier, is a condition before payment to either the subcontractor, sub-subcontractor, or supplier at whatever tier who has performed in accordance with the construction contract terms.

The bill also provides that in any construction contract between an owner and a contractor, the parties shall include a provision that requires the owner to pay the contractor within 40 days after receipt of an invoice or pay application following satisfactory completion of the portion of the work for which the contractor has sought payment. Any construction contract that does not contain such a provision shall be deemed to include the provision even if the contract states otherwise.

An owner shall not be required to pay amounts invoiced or subject to a contractor's pay application if subject to withholding due to the contractor's material noncompliance with the terms of the construction contract, provided that the amount withheld shall not exceed the reasonable value of the work in noncompliance. If an owner intends to withhold all or part of the amount invoiced by or subject to, the contractor's pay application, the owner shall give notice containing certain requirements as provided in the bill to the contractor in writing of its intention within 15 days after receipt of the invoice or pay application. The contractor shall within seven days after receipt of notice or of knowledge of withholding, provide a copy of the notice or information to each subcontractor affected. Failure by the owner or contractor to timely notify shall be deemed to be acceptance, subject only to the owner's or contractor's right to claim later that materially noncompliant work was subsequently discovered and that such work was not reasonably discoverable before the date for giving the notice.

In any construction contract between a contractor and a subcontractor, the parties shall include a provision that requires the contractor to pay the subcontractor within seven days after receipt of payment from the owner for the subcontractor's work. Any construction contract that does not contain such provision shall be deemed to include the provision even if the contract states otherwise. Within two business days after receipt of payment from the owner for one or more subcontractors' work, the contractor shall notify each subcontractor in writing, or electronically, of the amount of payment received. The contractor must within seven days of receipt of funds from the owner remit to each subcontractor its full share. Any funds received by the contractor from the owner for a subcontractor's work that the owner does not intend to pay to the subcontractor will promptly be returned to the owner. Partial payment by the owner to the contractor will not be a basis for the contractor to withhold more from the subcontractor than the owner withheld from the contractor for the subcontractor's work.

This bill provides that a sub-subcontractor or supplier shall have the same rights and responsibilities in relation to its subcontractor as that subcontractor has to the contractor. Additionally, all rights and responsibilities shall flow down to all parties in the construction contract chain, no matter the tier.

The bill will not apply to the repair, remodeling, or addition to any owner-occupied residential property of four units or less and shall only apply to construction contracts or other agreements entered into on or after August 28, 2024.