

SB 324 by Deuell/Chisum

Construction Contingent Payment Bill

Summary

A *contingent payment clause* is a construction contract clause that makes the owner's payment to the general contractor a condition precedent to the general contractor's obligation to pay the subcontractor. The bill defines the clause and provides for situations when the clause can not be used as a defense to not paying the subcontractor. Such as:

1. If the owner fails to pay the general contractor because of the conduct or work of the general contractor, the contingent payment clause is not effective against the innocent subcontractor.
2. If the owner fails to pay the general contractor because of the conduct or work of another subcontractor, the contingent payment clause is not effective against the innocent subcontractor.
3. When the owner and general contractor are in actuality the same, the contingent payment clause is not effective.
4. The contingent payment clause is not enforceable if to do so would be unconscionable.
5. If the subcontractor has not been paid for past work and gives notice to the general contractor that the subcontractor will look to the general contractor for payment for future work, the contingent payment clause is not effective as it relates to the future work.
6. A contingent payment clause can't be used to invalidate the enforceability of an otherwise valid mechanic's lien or bond claim.
7. If the owner becomes insolvent, the bill provides for a risk sharing arrangement between the general contractor and subcontractor.

Exceptions in the bill: Exceptions for design services, homebuilders, road, highway, utility and other related or similar projects associated with civil engineering.