

- SUBJECT:** Regulating payment terms of disaster remediation contracts
- COMMITTEE:** Economic and Small Business Development — committee substitute recommended
- VOTE:** 7 ayes — J. Davis, Vo, R. Anderson, Miles, Murphy, Reynolds, Sheets
0 nays
- WITNESSES:** For — Hector Uribe, Texas Independent Roofing Contractors Association, U.S. Hispanic Contractors Association; Harold Peterson; (*Registered, but did not testify*: Stacy Pearson, Texas Independent Roofing Contractors Association; Cathy DeWitt, Texas Association of Business; Jon Conner, J-Conn Roofing; Fred Schroeder, Houston’s Waterproofing & Sheet Metal Specialists; Pamela Bratton, Career Consultants, Meador Staffing)

Against — Don Dixon

On — None
- DIGEST:** CSHB 1711 would add ch. 57 to the Business and Commerce Code to regulate disaster remediation contracts between a contractor and a property owner or lessee. The bill would define “disaster remediation” as the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of property performed due to damage or destruction caused by a natural disaster formally declared by the governor.

CSHB 1711 would prohibit a disaster remediation contractor from requiring full or partial payment under a contract before the contractor began work. The bill also would prohibit a contractor from requiring any partial payment under the contract that exceeded an amount proportional to the work performed, including materials delivered.

A disaster remediation contract would have to be in writing and include a specific statement that the contract was subject to ch. 57 and its payment provisions. The bill would prohibit and void any purported waiver of ch. 57.

CSHB 1711 would make a violation of ch. 57 a false, misleading, or deceptive act or practice as defined by and punishable under the Business and Commerce Code, ch. 17, subch. E, the Deceptive Trade Practices Act.

The bill would take effect September 1, 2011, and would apply only to a contract entered into on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1711 would protect consumers and improve access to reliable and responsible disaster remediation contractors. Consumers are especially vulnerable to deceptive trade practices after a natural disaster. Individuals posing as contractors will come into town at that time, insist the consumer pay 25 to 50 percent of the estimated cost of services needed, take the money, and leave town. After Hurricane Ike, for example, Houston residents who needed home repairs lost money to such scammers. The scammers take advantage of the desperate, the poor, and the elderly. CSHB 1711 would establish consumer protections to put an end to these deceptive practices.

The bill has support from three prominent contractor trade associations, who collaborated with the author's office to reach a mutual agreement on how best to weed out such unscrupulous players in the industry. The bill would take a new approach from those tried in the past and would regulate only contract transactions in the context of a declared disaster, rather than contractors themselves via new licensing and registration requirements. By taking this approach, CSHB 1711 would both protect consumers and maintain contractors' ability to access the free market.

CSHB 1711 would not include a criminal penalty because it would be duplicative. The prohibited practices already could be considered theft. Also, independent contractors and small businesses cannot always keep up with the latest relevant legislation, and such an accidental oversight should not be punished with a criminal penalty.

The bill would have no significant fiscal implication to the state, and any new complaints and investigations by the Office of the Attorney General's Consumer Protection and Public Health Division could be absorbed within existing resources.

OPPONENTS
SAY:

While CSHB 1711 would help weed out many predators in the wake of a natural disaster, the bill could be stronger. The bill should include the criminal penalty present in the original bill to serve as a stronger deterrent to those who might take advantage of desperate Texans.

NOTES:

The committee substitute differs from the bill as filed by removing the criminal penalty, specifying that a partial payment could include an amount proportional to materials delivered, and excluding individuals officially authorized by the Texas Commission on Environmental Quality to perform solid waste services from the definition of “disaster remediation contractor.”