By: ____________________________          __.B. No. _____
Substitute the following for __.B. No. _____:
By: ____________________________          C.S.__.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to lender notice to contractors regarding a construction
loan or financing agreement for the improvement of real property
and related procedures for suspending contractors' and
subcontractors' performance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 28, Property Code, is amended by adding
Section 28.0091 to read as follows:

Sec. 28.0091. LENDER NOTICE OF DEFAULT TO CONTRACTORS;

SUSPENSION OF PERFORMANCE PENDING CURE. (a) This section applies
only to a lender that provides financing through a construction
loan or under a financing agreement for an improvement to real
property for which the real property or improvement is collateral.
This section does not apply with respect to a loan or financing
agreement used primarily for personal, family, or household
purposes.

(b) For an improvement to real property for which financing
is provided as described by Subsection (a), the contractor shall
provide to the lender:

(1) the contractor's name, physical and mailing
address and e-mail address, if available, and telephone number;

and

(2) the name of the person to whom any notice under
this section should be delivered.
(c) Except as provided by Subsection (f), each contractor and subcontractor providing labor, materials, equipment, or services for an improvement to real property for which financing is provided as described by Subsection (a) is entitled to suspend contractually required performance without penalty or liability for damages if a contractor receives notice under Subsection (d).

(d) Except as provided by Subsection (f), a lender shall immediately notify the contractor identified under Subsection (b) on the earliest date on which the lender sends to the borrower one of the following notices in connection with a particular default under the loan or financing agreement:

(1) a notice of intention to accelerate;
(2) a notice of acceleration;
(3) a notice of set-off; or
(4) a notice of foreclosure.

(e) On receipt of notice under Subsection (d), a contractor shall immediately notify each of the contractor's subcontractors of the contractor's receipt of the notice and of the subcontractor's right under this section as a result of the notice to suspend contractually required performance without penalty or liability for damages.

(f) A lender is not required to give notice to a contractor under Subsection (d) and the contractor and the contractor's subcontractors are not entitled to suspend performance under this section if, before the lender sends a notice described by Subsection (d) to the borrower, a written agreement exists between the lender and the contractor that:
(1) provides for the continued performance by the contractor and for payment to the contractor in the event of a default by the borrower or property owner under the loan or financing agreement;

(2) provides for notice from the lender to the contractor that the borrower or property owner is in default under the loan or financing agreement;

(3) requires that, on the receipt of notice under Subdivision (2), the contractor shall immediately notify the contractor's subcontractors of the borrower's or property owner's default under the loan or financing agreement; and

(4) specifically states that subcontractors of the contractor are third-party beneficiaries of the lender's obligations under the agreement.

(g) A subcontractor is a third-party beneficiary of a lender's obligations under Subsection (d) with equal standing to a contractor to enforce remedies.

(h) A lender that provides timely notice to a contractor under Subsection (d) is not liable for damages to the contractor or any of the contractor's subcontractors for any costs incurred to provide labor, materials, equipment, or services contemplated under the loan or financing agreement, except for those costs for which the lender has expressly agreed to be obligated to pay.

SECTION 2. The change in law made by this Act applies only to a construction loan or financing agreement entered into on or after the effective date of this Act. A construction loan or financing agreement entered into before the effective date of this
1 Act is governed by the law in effect immediately before the
2 effective date of this Act, and that law is continued in effect for
3 that purpose.
4
5 SECTION 3. This Act takes effect September 1, 2013.