

BILL ANALYSIS

H.B. 1513
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Bankruptcy on a construction project can defeat the protections offered by the Texas Construction Trust Fund Act. For example, a subcontractor understandably will not file a lien on a project or will sign a lien release once a general contractor pays the subcontractor. Under current law, if the general contractor files for bankruptcy within 90 days of the payment to the subcontractor, the full amount of the payment may be taken back by a bankruptcy trustee asserting a preference action, leaving the subcontractor without payment for work performed. The subcontractor has no lien rights against the project because the time for perfecting a lien has long passed or because the subcontractor signed a release of its lien rights upon receipt of payment from the general contractor. This example also applies to the notice requirements entitling a subcontractor to payment from a surety bond on a public construction project.

Further, even if the original payment derived from a trust fund under the act, the subcontractor may be left without protection due to the bankruptcy court's authority to return the original payment to the general contractor for priority distribution to all creditors. The general contractor's lenders are usually the highest priority creditors and receive the majority of priority distributions. The subcontractor, who was paid and thus bypassed its lien rights but was later forced to return the payment to the trustee, is usually left without payment. This example applies equally to a general contractor, in the case of a payment from an owner who later files for bankruptcy, as well as downstream in the subcontractor-supplier context.

H.B. 1513 revises the Texas Construction Trust Fund Act to deal with the effects of the preferential transfer statute and to clarify the remedies intended to be provided by the act. Specifically, the bill states that trust funds in the hands of a construction trustee are expressly removed from the debtor's bankruptcy estate, states that the commingling of funds by a construction trustee with other funds of the construction trustee does not destroy the trust nature of the funds, and clarifies that the act applies to both public and private projects in Texas, whether bonded or not.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1513 amends the Property Code to specify that trust funds paid to a creditor under provisions of the code relating to construction payments, loan receipts, and the misapplication of trust funds are not property or an interest in property of a debtor who is a trustee of the trust funds.

H.B. 1513 specifies that such code provisions for construction payments, loan receipts, and the misapplication of trust funds apply to a public or private contract for the improvement of specific real property in Texas, regardless of whether a construction contract is covered by a statutory or

common law payment bond.

H.B. 1513 specifies that a trustee who commingles trust funds with other funds in the trustee's possessions does not defeat a trust created under the code provisions for construction payments, loan receipts, and the misapplication of trust funds.

EFFECTIVE DATE

September 1, 2009.