

BILL ANALYSIS

Senate Research Center
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S.B. 1137
By: Jackson, Mike
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Bankruptcy on a construction project can defeat the protections given 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 later files for bankruptcy within 90 days of the payment to the subcontractor, the full amount of the payment may eventually be taken back by a bankruptcy trustee asserting a preference action. Thus, the subcontractor may only receive a fraction of his original payment, if any. The subcontractor will not have any lien rights against the project because the time for perfecting a lien has long passed or the subcontractor signed a release of his lien rights upon being paid by 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 though the original payment derived from a trust fund under the Construction Trust Fund Act, the subcontractor may still 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 the distributions. The subcontractor—who was paid, and thus bypassed its lien (or bond) rights, but was later forced to return payment to the trustee—is usually left without payment. Additionally, the above example applies equally to a general contractor, in the case of payment from an owner who later files for bankruptcy, as well as downstream in the subcontractor-supplier context.

As proposed, S.B. 1137 provides that trust funds paid to a creditor under Chapter 162 (Construction Payments, Loan Receipts, and Misapplication of Trust Funds), Property Code, are not property or an interest in property of a debtor who is a trustee described by Section 162.002 (Contractors as Trustees), Property Code. The bill also provides that regardless of whether a construction contract is covered by a statutory or common law payment bond, Chapter 162 applies to a certain contract for the improvement of specific real property in this state.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 162.001, Property Code, by adding Subsection (d), to provide that trust funds paid to a creditor under this chapter are not property or an interest in property of a debtor who is a trustee described by Section 162.002 (Contractors as Trustees).

SECTION 2. Amends Section 162.004, Property Code, by adding Subsection (c), to provide that regardless of whether a construction contract is covered by a statutory or common law payment bond, this chapter applies to a public or private construction contract for the improvement of specific real property in this state.

SECTION 3. Amends Section 162.031, Property Code, by adding Subsection (d), to provide that a trustee who commingles trust funds with other funds in the trustee's possession does not defeat a trust created by this chapter.

SECTION 4. Effective date: September 1, 2009.