

By: Wentworth  
(Deshotel)

S.B. No. 1425

A BILL TO BE ENTITLED

AN ACT

relating to an account for construction retainage; providing a  
civil penalty.

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

SECTION 1. Section 162.005, Property Code, is amended by  
adding Subdivision (7) to read as follows:

(7) "Construction trust fund account" means an account  
in a federally insured financial institution into which are  
deposited only funds required by Section 162.0061(a) to be  
deposited in a construction trust fund account and other funds  
deposited by the property owner that are necessary to pay charges  
imposed on the account by the financial institution.

SECTION 2. Subchapter A, Chapter 162, Property Code, is  
amended by adding Sections 162.0061 and 162.008 to read as follows:

Sec. 162.0061. CONSTRUCTION TRUST FUND ACCOUNT REQUIRED IN  
CERTAIN CIRCUMSTANCES. (a) Except as provided by this section, a  
property owner who enters into a construction loan or financing  
agreement to pay toward the improvement of real property that is  
secured wholly or partly by a lien on the property or improvement  
shall deposit in a construction trust fund account in a financial  
institution not later than contemporaneously with payment to a  
contractor the amount retained under Subchapter E, Chapter 53, and  
other retainage, as defined by Section 53.001, retained by the  
owner from the contractor to be held in trust for the benefit of a

1 person described by Section 162.003(a). Trust funds deposited in a  
2 construction trust fund account under this section shall be used  
3 first toward the satisfaction of the owner's obligations and a  
4 claimant's rights under Subchapter E, Chapter 53. Trust funds  
5 remaining in the construction trust fund account after the  
6 satisfaction of those obligations and rights may be used by the  
7 owner for other construction payments under this chapter or other  
8 purposes of the owner. Trust funds under this section are not  
9 subject to seizure, offset, or taking by the financial institution  
10 or a creditor of the owner. This subsection does not reduce the  
11 owner's obligation or liability under Subchapter E, Chapter 53.

12 (b) This section does not apply to a property owner who  
13 enters into a construction loan or financing agreement to pay  
14 toward the construction, remodeling, or repair of a single-family  
15 house or duplex used for residential purposes.

16 (c) This section does not apply to a property owner  
17 improving real property if the value of the improvement to be made  
18 is \$250,000 or less.

19 Sec. 162.008. MANAGEMENT OF CONSTRUCTION TRUST FUND  
20 ACCOUNTS. (a) If a property owner required to maintain a  
21 construction trust fund account under Section 162.0061 opens and  
22 maintains a separate construction trust fund account with the  
23 financial institution for each project subject to this subchapter,  
24 the periodic statement received from the financial institution  
25 must:

26 (1) refer to the account as a "construction trust  
27 fund" account; and

1           (2) identify the project for which the construction  
2 trust fund account is maintained.

3           (b) If a property owner required to maintain a construction  
4 trust fund account opens and maintains a construction trust fund  
5 account with the financial institution into which funds for two or  
6 more projects subject to this subchapter are deposited:

7           (1) the periodic statement received from the financial  
8 institution must refer to the account as a "construction trust  
9 fund" account; and

10           (2) the owner shall maintain an account record for the  
11 construction trust fund account that provides information relating  
12 to:

13                   (A) the source and amount of the funds in the  
14 account and the date the funds were deposited;

15                   (B) the date and amount of each disbursement from  
16 the account and the person to whom the funds were disbursed; and

17                   (C) the current balance of the account.

18           (c) For each construction trust fund account maintained by  
19 the property owner under Subsection (b), the owner shall maintain  
20 the account record for each construction project for which trust  
21 funds have been deposited.

22           (d) A property owner shall, not later than the 14th day  
23 after receipt of a written request, provide a person who is a  
24 beneficiary of trust funds with a copy of:

25                   (1) the periodic statement received from the financial  
26 institution regarding the construction trust fund account into  
27 which the trust funds of which the person is a beneficiary have been

1 deposited; and

2 (2) the account record required to be maintained by  
3 the owner with respect to the construction project for which the  
4 trust funds have been deposited.

5 SECTION 3. Section 162.032, Property Code, is amended by  
6 adding Subsection (d) to read as follows:

7 (d) If a beneficiary of the trust funds required to be  
8 maintained in a construction trust fund account incurs actual  
9 damages as a result of the property owner's failure to establish or  
10 maintain a construction trust fund account in violation of Section  
11 162.0061 or failure to establish or maintain an account record for  
12 the construction trust fund account in violation of Section  
13 162.008, the beneficiary may recover the beneficiary's actual  
14 damages, reasonable attorney's fees, and a civil penalty of \$500,  
15 in addition to any other remedy provided by law, from the property  
16 owner and each trustee who is an owner, officer, director, or agent  
17 of the property owner and who receives trust funds or controls or  
18 directs trust funds.

19 SECTION 4. The change in law made by this Act applies only  
20 to an amount retained under an original contract entered into on or  
21 after the effective date of this Act. An amount retained under an  
22 original contract entered into before the effective date of this  
23 Act is governed by the law as it existed immediately before that  
24 date, and that law is continued in effect for that purpose.

25 SECTION 5. This Act takes effect September 1, 2011.