

1-1 By: Wentworth S.B. No. 1425
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 May 12, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 2; May 12, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1425 By: Lucio

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to an account for construction retainage; providing a
1-11 civil penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 162.005, Property Code, is amended by
1-14 adding Subdivision (7) to read as follows:

1-15 (7) "Construction trust fund account" means an account
1-16 in a federally insured financial institution into which are
1-17 deposited only funds required by Section 162.0061(a) to be
1-18 deposited in a construction trust fund account and other funds
1-19 deposited by the property owner that are necessary to pay charges
1-20 imposed on the account by the financial institution.

1-21 SECTION 2. Subchapter A, Chapter 162, Property Code, is
1-22 amended by adding Sections 162.0061 and 162.008 to read as follows:

1-23 Sec. 162.0061. CONSTRUCTION TRUST FUND ACCOUNT REQUIRED IN

1-24 CERTAIN CIRCUMSTANCES. (a) Except as provided by this section, a
1-25 property owner who enters into a construction loan or financing
1-26 agreement to pay toward the improvement of real property that is
1-27 secured wholly or partly by a lien on the property or improvement
1-28 shall deposit in a construction trust fund account in a financial
1-29 institution not later than contemporaneously with payment to a
1-30 contractor the amount retained under Subchapter E, Chapter 53, and
1-31 other retainage, as defined by Section 53.001, retained by the
1-32 owner from the contractor to be held in trust for the benefit of a
1-33 person described by Section 162.003(a). Trust funds deposited in a
1-34 construction trust fund account under this section shall be used
1-35 first toward the satisfaction of the owner's obligations and a
1-36 claimant's rights under Subchapter E, Chapter 53. Trust funds
1-37 remaining in the construction trust fund account after the
1-38 satisfaction of those obligations and rights may be used by the
1-39 owner for other construction payments under this chapter or other
1-40 purposes of the owner. Trust funds under this section are not
1-41 subject to seizure, offset, or taking by the financial institution
1-42 or a creditor of the owner. This subsection does not reduce the
1-43 owner's obligation or liability under Subchapter E, Chapter 53.

1-44 (b) This section does not apply to a property owner who
1-45 enters into a construction loan or financing agreement to pay
1-46 toward the construction, remodeling, or repair of a single-family
1-47 house or duplex used for residential purposes.

1-48 (c) This section does not apply to a property owner
1-49 improving real property if the value of the improvement to be made
1-50 is \$250,000 or less.

1-51 Sec. 162.008. MANAGEMENT OF CONSTRUCTION TRUST FUND

1-52 ACCOUNTS. (a) If a property owner required to maintain a
1-53 construction trust fund account under Section 162.0061 opens and
1-54 maintains a separate construction trust fund account with the
1-55 financial institution for each project subject to this subchapter,
1-56 the periodic statement received from the financial institution
1-57 must:

1-58 (1) refer to the account as a "construction trust
1-59 fund" account; and

1-60 (2) identify the project for which the construction
1-61 trust fund account is maintained.

1-62 (b) If a property owner required to maintain a construction
1-63 trust fund account opens and maintains a construction trust fund

2-1 account with the financial institution into which funds for two or
2-2 more projects subject to this subchapter are deposited:

2-3 (1) the periodic statement received from the financial
2-4 institution must refer to the account as a "construction trust
2-5 fund" account; and

2-6 (2) the owner shall maintain an account record for the
2-7 construction trust fund account that provides information relating
2-8 to:

2-9 (A) the source and amount of the funds in the
2-10 account and the date the funds were deposited;

2-11 (B) the date and amount of each disbursement from
2-12 the account and the person to whom the funds were disbursed; and

2-13 (C) the current balance of the account.

2-14 (c) For each construction trust fund account maintained by
2-15 the property owner under Subsection (b), the owner shall maintain
2-16 the account record for each construction project for which trust
2-17 funds have been deposited.

2-18 (d) A property owner shall, not later than the 14th day
2-19 after receipt of a written request, provide a person who is a
2-20 beneficiary of trust funds with a copy of:

2-21 (1) the periodic statement received from the financial
2-22 institution regarding the construction trust fund account into
2-23 which the trust funds of which the person is a beneficiary have been
2-24 deposited; and

2-25 (2) the account record required to be maintained by
2-26 the owner with respect to the construction project for which the
2-27 trust funds have been deposited.

2-28 SECTION 3. Section 162.032, Property Code, is amended by
2-29 adding Subsection (d) to read as follows:

2-30 (d) If a beneficiary of the trust funds required to be
2-31 maintained in a construction trust fund account incurs actual
2-32 damages as a result of the property owner's failure to establish or
2-33 maintain a construction trust fund account in violation of Section
2-34 162.0061 or failure to establish or maintain an account record for
2-35 the construction trust fund account in violation of Section
2-36 162.008, the beneficiary may recover the beneficiary's actual
2-37 damages, reasonable attorney's fees, and a civil penalty of \$500,
2-38 in addition to any other remedy provided by law, from the property
2-39 owner and each trustee who is an owner, officer, director, or agent
2-40 of the property owner and who receives trust funds or controls or
2-41 directs trust funds.

2-42 SECTION 4. The change in law made by this Act applies only
2-43 to an amount retained under an original contract entered into on or
2-44 after the effective date of this Act. An amount retained under an
2-45 original contract entered into before the effective date of this
2-46 Act is governed by the law as it existed immediately before that
2-47 date, and that law is continued in effect for that purpose.

2-48 SECTION 5. This Act takes effect September 1, 2011.

2-49 * * * * *