

## **BILL ANALYSIS**

H.B. 1966  
By: Keffer  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under many construction contracts, an owner will deduct a percentage of the amount earned by the contractor for labor or materials furnished during the project's progress and retain the amount deducted until after the project is completed. However, concerns have been raised regarding this retained amount relating to an owner of a project who defaults on obligations to the lender of construction funds. Interested parties observe that a number of cases have arisen in which a defaulting owner believes or claims that the bank is holding the retained amount when, in actuality, it is not. The parties explain that under such circumstances the contractor, subcontractors, or other individuals who have provided labor or materials to the project do not get paid the amount that should have been retained by the owner. H.B. 1966 seeks to ensure that individuals who provide labor or materials to improvements of real property that are financed by a construction loan or financing agreement will be paid in full on completion of the project.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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. 1966 amends the Property Code to require 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 to deposit in a construction trust fund account not later than contemporaneously with payment to a contractor any money withheld from the payment as retainage to be held in trust for the benefit of an artisan, laborer, mechanic, contractor, subcontractor, or materialman who labors or who furnishes labor or material for the construction or repair of the improvement.

H.B. 1966 requires the trust funds deposited in a construction trust fund account to be used first to satisfy the owner's obligations and liabilities for retainage and a claimant's rights under statutory provisions relating to a mechanic's, contractor's, or materialman's lien. The bill authorizes use by the owner of trust funds remaining in the construction trust fund account after the satisfaction of those obligations, liabilities, and rights for other certain construction payments or direct costs of the owner. The bill excepts trust funds deposited into a construction trust fund account from seizure, offset, or taking by the financial institution or a creditor of the owner. The bill establishes that such provisions relating to the disposition and use of trust funds do not alter the owner's obligation or liability under any other law.

H.B. 1966 exempts from the bill's requirement to deposit retainage in a construction trust fund account a property owner who enters into a construction loan or financing agreement to pay toward the construction, remodeling, or repair of a single-family house or duplex used for residential purposes or for related land development. The bill also exempts a property owner improving real property if the value of the improvement to be made is \$500,000 or less.

H.B. 1966 authorizes a property owner, instead of establishing a construction trust fund account, to obtain a bond furnished by the contractor that meets certain requirements of a bond to pay liens or claims of a mechanic, contractor, or materialman or to furnish a bond in a minimum penal sum that meets certain additional requirements prescribed by the bill and is conditioned on prompt payment for retainage owed to specified persons and for the protection and use of each claimant due prompt payment. The bill sets out requirements relating to the execution of such a bond and prohibits the bond from being subject to any notice or perfection obligation other than as may be required under a mechanic's, contractor's, or materialman's lien. The bill prohibits a suit from being filed on such a bond after the first anniversary of the later of the date of completion of the contract between the owner and contractor or the date on which retainage is due to the contractor.

H.B. 1966 sets out requirements relating to the contents of a periodic statement received from a financial institution with respect to a construction trust fund account based on whether the property owner maintains a separate construction trust fund account for each project or maintains a construction trust fund account into which funds for two or more projects are deposited. The bill requires a property owner that opens and maintains a construction trust fund account into which funds for two or more projects are deposited to maintain an account record for the account that provides certain information. The bill requires the owner, for each construction trust fund account maintained by the owner, to maintain the account record for each construction project for which trust funds have been deposited.

H.B. 1966 requires a property owner maintaining a construction trust fund account, not later than the 14th day after the property owner receives a written request from a person who is a beneficiary of trust funds, to provide the beneficiary with a copy of the periodic statement received from the financial institution regarding the construction trust fund account or an original executed authorization sufficient to allow the requesting person to obtain the periodic statement and the required account record and to provide the beneficiary with the account record required to be maintained by the owner with respect to the construction project for which the trust funds have been deposited or, if a bond has been obtained or furnished in lieu of a trust fund account, requires a property owner to provide the beneficiary with proof of a bond.

H.B. 1966 authorizes a beneficiary, if a property owner does not provide such notice or the information provided does not demonstrate that the owner has complied with the requirement to deposit funds in a construction trust fund account or to obtain a bond in lieu of a trust fund account, to suspend contractually required performance the 10th day after the date the beneficiary gives the owner written notice that states the intent of the beneficiary to suspend performance and the reason for suspending performance if the owner does not cure the grounds for suspension before the beneficiary suspends performance. The bill authorizes an owner to cure any grounds for such suspension by complying with the requirements for a construction trust fund account or bond in lieu of such an account and providing proof of that compliance to the beneficiary. The bill establishes that a beneficiary that has suspended performance is not required to supply further labor, services, or materials before the date the owner cures the grounds for suspension and pays the beneficiary's costs for suspending performance and for resuming performance. The bill also establishes that such a beneficiary is not responsible for damages resulting from suspending performance unless the beneficiary continues to suspend performance after the 10th day after the date the owner has cured the grounds for suspension and paid the beneficiary for the costs.

H.B. 1966 specifies that an artisan, laborer, mechanic, contractor, subcontractor, or materialman

who labors or who furnishes labor or material for the construction or repair of an improvement on specific real property in Texas is a beneficiary of any trust funds withheld as retainage or required to be deposited in a construction trust fund account in connection with the improvement.

H.B. 1966 makes it an affirmative defense to prosecution or other action brought for misapplication of trust funds required to be deposited into a construction trust fund account that the trust funds have been retained by the trustee, after notice to the beneficiary who has made a request for payment, as a result of the trustee's reasonable belief that the beneficiary is not entitled to such funds or have been retained as authorized or required under statutory provisions relating to a mechanic's, contractor's, or materialman's lien.

**EFFECTIVE DATE**

September 1, 2015.