

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1425  
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Business & Commerce  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1425 addresses a narrow, but significant, part of the Property Code concerning a mechanic's and materialman's liens on real property relating to a concept called retainage.

Chapter 53 (Mechanic's, Contractor's, or Materialman's Lien), Property Code, grants a lien right to people who furnish labor or material to improve real property. The labor or materials are typically furnished by subcontractors and suppliers; however, a general contractor can also provide the labor or materials. In addition to the lien rights under Chapter 53, a general contractor (a person who contracts directly with the property owner) has a lien granted by the Texas Constitution.

Monthly, or sometimes more often, a contractor bills the owner for work performed on a construction project. Chapter 53 requires that an owner pay only 90 percent of the work put in place and retain the other 10 percent. This 10 percent is called retainage.

S.B. 1425 addresses the issue of retainage when an owner or borrower defaults on his or her obligations to the lender of construction funds. A number of cases have arisen where the retainage is not to be found upon the owner's or borrower's default, or where the borrower claims that the bank is holding the retainage. In any event, the contractor and subcontractors, who have provided services or supplies to the project and have a claim to the retainage, do not get paid.

S.B. 1425 amends Chapter 162 (Construction Payments, Loan Receipts, and Misapplication of Trust Funds), Property Code, to require an owner of a construction project to put aside retainage in a bank account as trust funds for the benefit of the contractors and subcontractors who are owed the retainage.

As proposed, S.B. 1425 amends current law relating to certain deposits in a construction account.

### **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 162.006, Property Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires a property owner who enters into a construction loan or financing agreement to pay toward the improvement of specific real property that is secured wholly or partly by a lien on the property to deposit in a construction account 10 percent of the loan receipts that are advanced for paying toward the construction of the improvement to be held in trust for a person described by Section 162.003(a) (relating to certain persons who labor or who furnish labor or material for the construction or repair of an improvement on certain property being a beneficiary of any trust funds paid or received in connection with the improvement). Provides that the trust funds under this subsection may be used only in satisfying the owner's obligations and the claimant's rights under Subchapter E (Required Retainage for Benefit of Lien Claimant), Chapter 53

(Mechanic's, Contractor's, or Materialman's Lien). Provides that trust funds remaining in the construction account after the date that the owner satisfies the obligations and rights under Subchapter E, Chapter 53, may be used to satisfy other obligations under this chapter.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes no further changes to this subsection.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.