By Simpson
Whatley Traeger
Van Bass
Moyer

H.B. No. 42

A BILL TO BE ENTITLED

AN ACT

Insert (3)

declaring construction payments and loan receipts to be trust funds; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and attaching a penalty; providing that failure to pay claims due after notice shall be prima facie evidence of intent to defraud and misapply such trust funds; providing for a form of notice and proof thereof; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to prosecution for other offenses; making the Texas Trust Act inapplicable; and declaring an emergency.

Insert (1) BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS DECLARED TRUST FUNDS. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property and the contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction.

Sec. 2. WRONGFUL DISBURSEMENT, USE OF RETENTION OF TRUST FUNDS. Any Trustee, who shall, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert, any trust funds, or part thereof, as defined in Section 1 of this Act, without first fully paying and satisfying all obligations of the Trustee to all artisans, laborers, mechanics, subcontractors, or materialmen, incurred or to be incurred in connection with the construction and improvements, for which said funds were received, shall be deemed to have misapplied said Trust

0*559

Funds. Misapplication of Trust Funds hereunder, under the value of $50.00, shall be punished by imprisonment in jail not exceeding two years and by fine not exceeding $500.00, or by such imprisonment without fine. Misapplication of Trust Funds hereunder, of the value of $50.00 or over shall be punished by confinement in the penitentiary not less than two nor more than ten years.

Sec. 3. FAILURE TO PAY AS PRIMA FACIE EVIDENCE OF INTENT TO DEFRAUD. The failure of a Trustee, who shall have received funds for the purpose of the improvement of specific real property within this state, to pay claims due, owing and unpaid, to artisans, laborers, mechanics, subcontractors or materialmen, in connection with said job, within ten (10) days after notice is given to the Trustee demanding payment, and setting forth the location of the construction job concerning which such claim arose, the amount of said claim, the date due, that such claim is unpaid, and a general statement of the kind of work done or materials furnished by him, or both, shall constitute prima facie evidence that such trustee did, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert such trust funds, or part thereof, as defined in Section 1 of this Act.

Sec. 4. FORM OF NOTICE AND EVIDENCE THEREOF. Notice as used herein shall be notice in writing sent by registered or certified mail or telegram addressed to such trustee at his last known business or residence address, and proof of compliance with this section, shall constitute prima facie evidence that such notice was given.

Sec. 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

Sec. 6. SAVING CLAUSE. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

Sec. 7. STATE'S ELECTION AS TO OTHER OFFENSE. Where trust funds are paid, misapplied, used, or otherwise diverted, in such a manner that such act constitutes a violation of this Act and some other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

Sec. 8. TEXAS TRUST ACT INAPPLICABLE. No trust created by this Act shall be subject to the Texas Trust Act nor shall this Act be construed to amend, repeal, or alter any provision of the Texas Trust Act.

Sec. 9. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendars of both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

0#559

By: Simpson H.B. No. 42

ANALYSIS OF COMMITTEE SUBSTITUTE

BACKGROUND INFORMATION

Under present law, there is no guarantee that funds paid to a contractor under a construction contract for the improvement of specific real property will be used only for the said construction project. The attached bill provides for the misapplication of these as a misdemeanor and provides recourse, other than civil action for the misapplication of these funds.

WHAT THE BILL PROPOSES TO DO

Declares construction payments and loan receipts to be trust funds, and defines wrongful disbursement and misapplication of trust funds as a misdemeanor.

SECTION ANALYSIS

Section 1. Provides that all moneys paid or loaned on a contract for the construction of improvements to real property be declared trust funds for the benefit of the subcontractors, artisans, and materialmen who work under the contractor who receives the money. There is a 20% allowable to be used for reasonable overhead and expenses of operating before the provisions of this act are to be brought to bear.

Section 2. Provides that if a Trustee of such a fund wrongfully misapplies with the intent to defraud shall be subject to the penal and fine provisions provided. Misdemeanor sanctions under $250 and felony over $250.

Section 3. If a person has violated the provisions of this Act and some other offense punishable under the laws of this State the prosecution shall have the opportunity to elect as to the method of prosecution.

Section 4. This act shall not apply to closing agents, lending institutions or construction payments covered by the payment of a bond.

Section 5. Severability clause.

Section 6. Saving clause.

Section 7. Texas Trust Act does not apply to this type of trust fund.

Section 8. Emergency clause.

The Committee held a hearing on the bill and referred it to a subcommittee. The subcommittee reported the bill back with a committee substitute. Mr. Ligarde moved to amend the committee substitute by replacing all of Section 1 with amendment No. 1 to the committee substitute. The amendment passed. Mr. Fondren moved the adoption of the committee substitute as amended. The motion carried by voice vote. The Committee voted to return H.B. 42 with the recomendation that it do pass as amended and be printed.

FORM C

(For a favorable report on a bill where a "committee substitute" was recommended by the committee.)

COMMITTEE REPORT

Date 3/21/67,

HON. BEN BARNES
Speaker of the House of Representatives.

Sir:

We, your Committee on Judiciary, to whom was referred H.B. No. 42, have had the same under consideration and beg to report back with recommendation that it do pass, and be not printed.

Committee Substitute was recommended and is to be printed in lieu of the original bill.

Fenal B. Rosson
Chairman.

(A "committee substitute" in the case of a bill is in the form of two suggested amendments, a new body and a new caption. Under the Rules a committee may authorize the printing of the "committee substitute" in lieu of the original bill. If the original caption is adequate, the "committee substitute" should be only a new body; and in such case the original caption should be printed along with the suggested new body.)

Fondren

COMMITTEE AMENDMENT
NO. 1

COMMITTEE AMENDMENT NO. 1

Amend H. B. No. 42 by striking all below the enacting clause and substituting the following:

Section 1. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS DECLARED TRUST FUNDS. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, contractors, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property, and the contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction.

Sec. 2. WRONGFUL DISBURSEMENT, USE OF RETENTION OF TRUST FUNDS. Any Trustee, who shall, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert, any trust funds, or part thereof, as defined in Section 1 of this Act, without first fully paying and satisfying all obligations of the Trustee to all artisans, laborers, mechanics, contractors, subcontractors, or materialmen, incurred or to be incurred in connection with the construction and improvements, for which said funds were received, shall be deemed to have misapplied said Trust Funds. Misapplication of Trust Funds hereunder, under the value of $250.~~00~~, shall be punished by imprisonment in jail not exceeding two years and by fine not exceeding $500.~~00~~, or by such imprisonment without fine. Misapplication of Trust Funds hereunder, of the value of $250.~~00~~ or over shall be punished by confinement in the Department of Corrections for a period not exceeding ten years.

Sec. 3. STATE'S ELECTION AS TO OTHER OFFENSE. Where trust funds are paid, misapplied, used, or otherwise diverted, in such a manner that such act constitutes a violation of this Act and some other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

Sec. 4. CLOSING AGENTS, LENDING INSTITUTIONS, AND CONSTRUCTION FUNDS COVERED BY PAYMENT BOND EXEMPT. This Act shall not be construed to impose any criminal or civil liability on any bank or lending institution by virtue of their having advance funds for the improvement of real property nor shall it be construed to impose any civil or criminal liability on any title company or other closing agent by virtue of their receiving or disbursing funds in

0-1691(2)

DATE APR 4 1967

READ AND ADOPTED, as Amended

Dorothy Heilman
CHIEF CLERK
HOUSE OF REPRESENTATIVES

the closing of real estate transactions. Further, moneys or funds received under a construction contract are exempt from the provisions of this Act if the full contract amount is covered by a corporate surety payment bond.

Sec. 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

Sec. 6. SAVING CLAUSE. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

Sec. 7. TEXAS TRUST ACT INAPPLICABLE. No trust created by this Act shall be subject to the Texas Trust Act nor shall this Act be construed to amend, repeal, or alter any provision of the Texas Trust Act.

Sec. 8. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendars of both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

Amend to amend

Sugaide

COMMITTEE AMENDMENT
NO. 1

to COMMITTEE AMENDMENT
NO. 1

COMMITTEE AMENDMENT NO. 1 to Committee Substitute

Amend the Sub-Committees substitute for House Bill No. 42 by striking out Section 1 and substituting the following:

"Section 1. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS DECLARED TRUST FUNDS. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, contractors, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property; provided, however, that up to and no more than 20% of said monies paid to a contractor or subcontractor or borrowed by a contractor, subcontractor, or owner may be used to pay reasonable overhead and operating expenses of said contractor, subcontractor, or owner. The contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction."

DATE APR 4 1967

READ AND ADOPTED, as substituted

Speaker of the House

HOUSE OF REPRESENTATIVES

COMMITTEE AMENDMENT
NO. 2

Fordren

COMMITTEE AMENDMENT NO. 2

Amend H. B. No. 42 by striking all above the enacting clause and substituting the following:

A BILL TO BE ENTITLED

AN ACT

declaring construction payments and loan receipts to be trust funds; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and felony and attaching a penalty; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to prosecution for other offenses; making the Texas Trust Act inapplicable and the application of the Act inapplicable to bonded jobs, closing agents and lending institutions; and declaring an emergency.

Whaley for

Substitute for Committee Amendment No 1 to Committee Substitute

Amend the Sub-Committee Substitute for House Bill No 42 by striking out Section 1 and substituting the following:

"Section 1. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS DECLARED TRUST FUNDS. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, contractors, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property; provided, however, that moneys paid to a contractor or subcontractor or borrowed by a contractor, subcontractor, or owner may be used to pay reasonable overhead of said contractor, subcontractor, or owner, directly related to such construction contract. The contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction."

DATE _____ 1967

READ AND ADOPTED

CLERK
HOUSE OF REPRESENTATIVES

By: Simpson, et al H.B. No. 42

A BILL TO BE ENTITLED

AN ACT

declaring construction payments and loan receipts to be trust funds and providing that moneys paid to or borrowed by a contractor, subcontractor, or owner may be used to pay reasonable overhead directly related to the construction contract; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and felony and attaching a penalty; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to prosecution for other offenses; making the Texas Trust Act inapplicable and the application of the Act inapplicable to bonded jobs, closing agents and lending institutions; and declaring an emergency.

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

Section 1. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS DECLARED TRUST FUNDS. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, contractors, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property; provided, however, that moneys paid

to a contractor or subcontractor or borrowed by a contractor, subcontractor, or owner may be used to pay reasonable overhead of said contractor, subcontractor, or owner, directly related to such construction contract. The contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction.

Sec. 2. WRONGFUL DISBURSEMENT, USE OF RETENTION OF TRUST FUNDS. Any Trustee, who shall, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert, any trust funds, or part thereof, as defined in Section 1 of this Act, without first fully paying and satisfying all obligations of the Trustee to all artisans, laborers, mechanics, contractors, subcontractors, or materialmen, incurred or to be incurred in connection with the construction and improvements, for which said funds were received, shall be deemed to have misapplied said Trust Funds. Misapplication of Trust Funds hereunder, under the value of $250, shall be punished by imprisonment in jail not exceeding two years and by fine not exceeding $500, or by such imprisonment without fine. Misapplication of Trust Funds hereunder, of the value of $250 or over shall be punished by confinement in the Department of Corrections for a period not exceeding ten years.

Sec. 3. STATE'S ELECTION AS TO OTHER OFFENSE. Where trust funds are paid, misapplied, used, or otherwise diverted, in such a manner that such act constitutes a violation of this Act and some

other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

Sec. 4. CLOSING AGENTS, LENDING INSTITUTIONS, AND CONSTRUCTION FUNDS COVERED BY PAYMENT BOND EXEMPT. This Act shall not be construed to impose any criminal or civil liability on any bank or lending institution by virtue of their having advance funds for the improvement of real property nor shall it be construed to impose any civil or criminal liability on any title company or other closing agent by virtue of their receiving or disbursing funds in the closing of real estate transactions. Further, moneys or funds received under a construction contract are exempt from the provisions of this Act if the full contract amount is covered by a corporate surety payment bond.

Sec. 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

Sec. 6. SAVING CLAUSE. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

Sec. 7. TEXAS TRUST ACT INAPPLICABLE. No trust created by this Act shall be subject to the Texas Trust Act nor shall this Act be construed to amend, repeal, or alter any provision of the Texas Trust Act.

Sec. 8. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendars of both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

Austin, Texas

May 3, 19 67

Hon. Preston Smith
President of the Senate

Sir:

We, your Committee on Counties, Cities, and Towns,

to which was referred H. B. No. 42, have had the same

under consideration, and I am instructed to report it back to

the Senate with the recommendation that it do _____

pass _____ and be _____ printed, as amended

Ralph M. Hall
Chairman

CAS

Hood

COMMITTEE AMENDMENT NO. 1

Amend Sec. 4 of H. B. 42 by striking the first sentence of said section and inserting in lieu thereof the following:

This act shall have no application to any moneys or credits held by any bank, savings and loan association or other lender or by any title company or other closing agent for disbursal, payment or credit in connection with any transaction to which this act is applicable.

MAY 11 1967

The House refused to concur in Senate amendments to House Bill No. 42 **and has requested** the appointment of a Conference Committee **to** consider the differences between the two Houses.

Dorothy Hallman

Chief Clerk, House of Representatives

ADOPTED

MAY 4 1967

#1

Charles Schnabel

SECRETARY OF SENATE

Amend caption to conform to body of bill.

ADOPTED

MAY 4 1967

#2

Charles Schnabel

SECRETARY OF SENATE

MAY 11 1967

The House refused to concur in Senate amendments to House Bill No. 42 and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

Dorothy Hallman

Chief Clerk, House of Representatives

Austin, Texas

May 11, 1967

Honorable Preston Smith,
President of the Senate.

Honorable Ben Barnes,
Speaker of The House of Representatives.

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on

House Bill No. 42

have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Word
J. P. Word

Bates
James S. Bates

Blanchard
H. J. Blanchard

Joe Christie Christie

Ralph Hall Hall

On the part of the Senate

MAY 12 1967

The House has adopted the Conference Committee Report on House Bill No. 42 by a non-record vote of ____ ayes, ____ noes.

Dorothy Hallman
Chief Clerk, House of Representatives

J. M. Simpson J M Simpson

John A. Traeger John A Traeger

Tom Bass Tom Bass

Walter L. Knapp Walter L Knapp

Willis Whatley Willis Whatley

On the part of the House

CAS

MOTION TO RECONSIDER THE VOTE BY WHICH House adopted Conf. Report WAS ADOPTED / ~~[illegible]~~ AND TO TABLE THE MOTION TO RECONSIDER PREVAILED ~~PASSED~~ BY A Non-Record VOTE ~~OF~~ ____ ~~AYES AND~~ ____ ~~NAYES~~

Dorothy Hallman
CHIEF CLERK HOUSE OF REPRESENTATIVES

~~MAY 15 1967~~ ~~SENT TO ENROLLING CLERK~~

MAY 15 1967 SENT TO ENROLLING CLERK

Approved Read from the Report

H.B. 42

A BILL TO BE ENTITLED

AN ACT

declaring construction payments and loan receipts to be trust funds; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and felony and attaching a penalty; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to ~~pro-~~ prosecution for other offenses; making the Texas Trust Act inapplicable and the application of the Act inapplicable to bonded jobs, closing agents and lending institutions; and declaring an emergency.

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

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some other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

Sec. 4. CLOSING AGENTS, LENDING INSTITUTIONS, AND CONSTRUCTION FUNDS COVERED BY PAYMENT BOND EXEMPT. This Act shall have no application to any bank, savings and loan association or other lender or to any title company or other closing agent in connection with any transaction to which this Act is applicable. Further, moneys or funds received under a construction contract are exempt from the provisions of this Act if the full contract amount is covered by a corporate surety payment bond.

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Austin, Texas

May 11, 1967

Honorable Preston Smith,
President of the Senate.

Honorable Ben Barnes,
Speaker of The House of Representatives.

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on House Bill No. 42 have met and had same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

J. P. Word

James S. Bates

H. J. Blanchard

Joe Christie

Ralph Hall

On the part of the Senate

ADOPTED by vote of 31-0

MAY 15 1967

Charles Schwabe

SECRETARY OF SENATE

J. M. Simpson

John A. Traeger

Tom Bass

Walter L. Knapp

Willis Whatley

On the part of the House

MAY 15 1967

Received from the Senate.

Dorothy Harman

CAS

Chief Clerk, House of Representatives

~~MAY 15 1967~~ ~~SENT TO ENROLLING CLERK~~

MAY 15 1967 SENT TO ENROLLING CLERK

A BILL TO BE ENTITLED

AN ACT

declaring construction payments and loan receipts to be trust funds; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and felony and attaching a penalty; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to prosecution for other offenses; making the Texas Trust Act inapplicable and the application of the Act inapplicable to bonded jobs, closing agents and lending institutions; and declaring an emergency.

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Sec. 2. WRONGFUL DISBURSEMENT, USE OF RETENTION OF TRUST FUNDS. Any Trustee, who shall, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert, any trust funds, or part thereof, as defined in Section 1 of this Act, without first fully paying and satisfying all obligations of the Trustee to all artisans, laborers, mechanics, contractors, subcontractors, or materialmen, incurred or to be incurred in connection with the construction and improvements, for which said funds were received, shall be deemed to have misapplied said Trust Funds. Misapplication of Trust Funds hereunder, under the value of $250.00, shall be punished by imprisonment in jail not exceeding two years and by fine not exceeding $500.00, or by such imprisonment without fine. Misapplication of Trust Funds hereunder, of the value of $250.00 or over shall be punished by confinement in the Department of Corrections for a period not exceeding ten years.

Sec. 3. STATE'S ELECTION AS TO OTHER OFFENSE. Where trust funds are paid, misapplied, used, or otherwise diverted, in such a manner that such act constitutes a violation of this Act and

some other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

Sec. 4. CLOSING AGENTS, LENDING INSTITUTIONS, AND CONSTRUCTION FUNDS COVERED BY PAYMENT BOND EXEMPT. This Act shall have no application to any bank, savings and loan association or other lender or to any title company or other closing agent in connection with any transaction to which this Act is applicable. Further, moneys or funds received under a construction contract are exempt from the provisions of this Act if the full contract amount is covered by a corporate surety payment bond.

Sec. 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

Sec. 6. SAVING CLAUSE. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

Sec. 7. TEXAS TRUST ACT INAPPLICABLE. No trust created by this Act shall be subject to the Texas Trust Act nor shall this Act be construed to amend, repeal, or alter any provisions of the Texas Trust Act.

Sec. 8. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendars of both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended.

ENROLLED

H.B. No. 42

AN ACT

declaring construction payments and loan receipts to be trust funds; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and felony and attaching a penalty; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to prosecution for other offenses; making the Texas Trust Act inapplicable and the application of the Act inapplicable to bonded jobs, closing agents and lending institutions; and declaring an emergency.

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

Section 1. CONSTRUCTION PAYMENTS AND LOAN RECEIPTS DECLARED TRUST FUNDS. All moneys or funds paid to a contractor or subcontractor or any officer, director or agent thereof, under a construction contract for the improvement of specific real property in this state, and all funds borrowed by a contractor, subcontractor, owner, or any officer, director or agent thereof, for the purpose of improving such real property which are secured in whole or in part by a lien on the specific property to be improved are hereby declared to be Trust Funds for the benefit of the artisans, laborers, mechanics, contractors, subcontractors or materialmen who may labor or furnish labor or material for the construction or repair of any house, building or improvement whatever upon such real property; provided, however, that moneys paid to a contractor or subcontractor or borrowed by a contractor, subcontractor, or

owner may be used to pay reasonable overhead of said contractor, subcontractor, or owner, directly related to such construction contract. The contractor, subcontractor, owner, or any officer, director or agent thereof, receiving such payments or funds, or having control or direction of same, is hereby made and constituted a Trustee of such funds so received or under his control or direction.

Sec. 2. WRONGFUL DISBURSEMENT, USE OF RETENTION OF TRUST FUNDS. Any Trustee, who shall, directly or indirectly, with intent to defraud, retain, use, disburse, misapply, or otherwise divert, any trust funds, or part thereof, as defined in Section 1 of this Act, without first fully paying and satisfying all obligations of the Trustee to all artisans, laborers, mechanics, contractors, subcontractors, or materialmen, incurred or to be incurred in connection with the construction and improvements, for which said funds were received, shall be deemed to have misapplied said Trust Funds. Misapplication of Trust Funds hereunder, under the value of $250, shall be punished by imprisonment in jail not exceeding two years and by fine not exceeding $500, or by such imprisonment without fine. Misapplication of Trust Funds hereunder, of the value of $250 or over shall be punished by confinement in the Department of Corrections for a period not exceeding ten years.

Sec. 3. STATE'S ELECTION AS TO OTHER OFFENSE. Where Trust Funds are paid, misapplied, used, or otherwise diverted, in such a manner that such act constitutes a violation of this Act and some other offense punishable under the laws of the State of Texas, the party thus offending shall be amenable to prosecution at the state's

election for misapplication of trust funds under this Act or for such other offense as may have been committed by him.

Sec. 4. CLOSING AGENTS, LENDING INSTITUTIONS, AND CONSTRUCTION FUNDS COVERED BY PAYMENT BOND EXEMPT. This Act shall have no application to any bank, savings and loan association or other lender or to any title company or other closing agent in connection with any transaction to which this Act is applicable. Further, moneys or funds received under a construction contract are exempt from the provisions of this Act if the full contract amount is covered by a corporate surety payment bond.

Sec. 5. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, or word of this Act is held to be unconstitutional, the remaining portions of the same, nevertheless shall be valid; and the Legislature declares that the Act would have been enacted without such unconstitutional portion.

Sec. 6. SAVING CLAUSE. Any violation of existing law or laws prior to the effective date of this Act, whether prosecution is commenced or not, shall not be affected by this Act and the provisions of such existing law or laws shall remain in full force and effect as to the then existing violation.

Sec. 7. TEXAS TRUST ACT INAPPLICABLE. No trust created by this Act shall be subject to the Texas Trust Act nor shall this Act be construed to amend, repeal, or alter any provisions of the Texas Trust Act.

Sec. 8. EMERGENCY CLAUSE. The importance of this legislation and the crowded condition of the calendars of both houses

H.B. No. 42

create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended.

Lieutenant Governor
President of the Senate

Speaker of the House

I hereby certify that H.B. No. 42 was passed by the House on April 4, 1967, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 42 on May 11, 1967, and requested the appointment of a Conference Committee to consider the differences between the two Houses; and that the House adopted the Conference Committee Report on H.B. No. 42 on May 12, 1967, by a non-record vote.

Chief Clerk of the House

I hereby certify that H.B. No. 42 was passed by the Senate, with amendments, on May 4, 1967, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a Conference Committee to consider the differences between the two Houses; and that the Senate adopted the Conference Committee Report on H.B. No. 42 on May 15, 1967, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: 5-27-67
Date

6:50 pm

John Connally
Governor

John L. Hill
Secretary of State

H.B. No. 42 By Simpson

A BILL TO BE ENTITLED

AN ACT

declaring construction payments and loan receipts to be trust funds; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and attaching a penalty; providing that failure to pay claims due after notice shall be prima facie evidence of intent to defraud and misapply such trust funds; providing for a form of notice and proof thereof; containing a severability clause; containing a saving clause; providing that the defined offense shall not be exclusive and that the state may elect as to prosecution for other offenses; making the Texas Trust Act inapplicable; and declaring an emergency.

FILED JAN 18 1967

JAN 23 1967 READ 1ST TIME AND REFERRED TO COMMITTEE ON Judiciary

MAR 21 1967 REPORTED FAVORABLY AS AMENDED SENT TO PRINTER

PRINTED, DISTRIBUTED AND REFERRED TO COMMITTEE ON RULES 12:45 P.M. (Time) MAR 22 1967 (Date)

Caption amended to conform to body of bill under authority of Rule IV, Sec. 26, Rules of the House of Representatives.

4-4-67
(Date)

Orea Huffman
(Engrossing and Enrolling Clerk)

APPROVED:
(Author)

APR 4 1967

Postponed to 4-4-67, at 11:30 A.M.

Dorothy Hallman
Chief Clerk, House of Representatives

RECEIVED MAR 22 1967 HOUSE OF REPRESENTATIVES A.M.

DELIVERED MAR 22 1967 HOUSE OF REPRESENTATIVES

APR 4 1967 Constitutional Rule requiring bills to be Read on three several days suspended by A four-fifths vote.
Yeas 123 Nays 15 + 1 present not voting.

Dorothy Hallman
Chief Clerk, House of Representatives

APR 4 1967 Read third time

non-record and PASSED by ~~following~~ vote: ~~yeas~~ ~~Nays~~

Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

APR 4 1967 MOTION TO RECONSIDER THE VOTE BY WHICH HB #42 WAS ~~ADOPTED~~ / PASSED AND TO TABLE THE MOTION TO RECONSIDER PREVAILED ~~PASSED~~ BY A non-record VOTE ~~OF~~ ~~AYES AND~~ ~~NAYES~~

Dorothy Hallman
CHIEF CLERK HOUSE OF REPRESENTATIVES

APR 4 1967 READ SECOND TIME Amended AND ORDERED ENGROSSED, by non-record Vote.

Dorothy Hallman
Chief Clerk, House of Representatives

APR 4 1967 SENT TO ENGROSSING CLERK

By: Simpson, et al

H.B. No. 42

C

A BILL TO BE ENTITLED

AN ACT

declaring construction payments and loan receipts to be trust funds and providing that moneys paid to or borrowed by a contractor, subcontractor, or owner may be used to pay reasonable overhead directly related to the construction contract; defining wrongful disbursement and misapplication of trust funds as a misdemeanor and felony and attaching a penalty; . . . etc.; and declaring an emergency.

1-18-67 Filed.

1-23-67 Read first time and referred to Committee on Judiciary.

3-21-67 Reported favorably as amended, sent to printer.

3-22-67 Printed, distributed and referred to Committee on Rules at 12:45 p.m.

4- 4-67 Postponed to 4-4-67 at 11:30 a.m.

4- 4-67 Read second time, amended and ordered engrossed by a non-record vote.

4- 4-67 Constitutional Rule requiring bills to be read on three several days suspended by a four-fifths vote: Yeas 123, Nays 15, and 1 present not voting.

4- 4-67 Read third time and passed by a non-record vote.

Dorothy Hallman
Chief Clerk, H. of R.

4- 4-67 Sent to Engrossing Clerk.

4- 4-67 Engrossed.

Engrossing Clerk, H. of R.

APR 6 1967 RETURNED FROM ENGROSSING CLERK

SENT TO THE SENATE

RECEIVED MAY 5 1967 HOUSE OF REPRESENTATIVES

APR 6 1967
IN THE SENATE
Received from the House

MAY 4 1967
READ SECOND TIME, amended
AND PASSED TO THIRD READING

APR 6 1967
Read first time
and referred to Committee
on State Affairs

MAY 4 1967
Amend caption to conform to body of bill.

A.R.

APR 25 1967
RE-REFERRED TO COMMITTEE ON
Counties, Cities and Towns

MAY 4 1967
Senate Rule 32 and
Constitutional Rule (Sec. 32, Art. III)
suspended by a vote of 30 yeas
0 nays, to place bill on third
reading and final passage.

DELIVERED MAY 5 1967 HOUSE OF REPRESENTATIVES

MAY 3 1967
Reported Favorably.
as amended

MAY 4 1967

READ THIRD TIME AND PASSED
BY THE FOLLOWING VOTE:

Yeas 30 Nays 0

Charles Schnabel
Secretary of the Senate

MAY 4 1967 SENT TO HOUSE

MAY 4 1967
RETURNED FROM SENATE

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 4 1967 SENT TO PRINTER

MAY 11 1967

The House refused to concur in Senate amendments to House Bill No. 42 and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

Dorothy Hallman
Chief Clerk, House of Representatives

MAY 15 1967 ~~SENT TO ENROLLING CLERK~~ ~~SENT TO ENGROSSING CLERK~~

MAY 15 1967 SENT TO ENROLLING CLERK