

SUBJECT: Individual accounts for construction contracts of \$5,000 or more

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Brimer, Rhodes, Corte, Dukes, Elkins, Giddings, Solomons, Woolley

0 nays

1 absent — Janek

SENATE VOTE: On final passage, Local and Uncontested Calendar, March 5 — 31-0

WITNESSES: None

BACKGROUND : Under the Property Code, construction payments to a contractor, subcontractor, or an agent made under a construction contract for the improvement of specific real property are considered trust funds. A contractor, subcontractor, or an agent who receives, controls, or directs the use of these funds is considered a trustee.

DIGEST: SB 241 would amend the Property Code to require that contractors deposit trust funds into separate construction accounts in financial institutions. This requirement would apply to contractors who had entered into a written contract with a property owner to construct improvements to a residential homestead in an amount exceeding \$5,000.

The contractor would be required to keep records pertaining to each construction account, detailing the source and amount of the deposits, the date, amount and person receiving each disbursement, and the account balance. In addition, the contractor would be required to maintain records on all direct and indirect costs charged property owners and would have to keep all invoices and supporting documents pertaining to the construction account. The contractor could not destroy any information required to be kept on the account until one year after the construction project was completed.

A trustee who failed to establish and maintain a construction account would commit a Class A misdemeanor, with a maximum penalty of one year in jail and a \$4,000 fine. The bill would establish an “intent to defraud” when a trustee retained, used, disbursed or diverted trust funds in a construction account.

Fees paid to a contractor in a cost-plus construction contract between the property owner and the contractor that was signed before construction began would not be considered to be trust funds.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 241 would protect consumers by making contractors account for all transactions involved in a construction project valued at \$5,000 or more. Nothing in current law prohibits contractors from using funds from one contract to finance another contract. This bill would prevent contractors from spending funds given them for one project on another and leaving homeowners with unfinished homes. Furthermore, it would force contractors to maintain good records, a sensible business practice in all cases.

**OPPONENTS
SAY:**

No apparent opposition.