

SUBJECT: Naming property owner as beneficiary of construction payment trust fund

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Deshotel, England, Gattis, Keffer, Quintanilla, S. Turner

0 nays

5 absent — Elkins, Christian, Giddings, S. Miller, Orr

WITNESSES: For — Beverly DeV Vaughn; Ned Muñoz, Texas Association of Builders

Against — None

On — Duane Waddill, Texas Residential Construction Commission

BACKGROUND: Under Property Code, sec. 162.001(c), in cases that a contractor and property owner have a written construction contract under which the owner pays the construction costs and a reasonable fee to the contractor, the fee is not considered a trust fund.

Property Code, sec. 162.006 requires that a contractor who enters into a written contract with a property owner for improvements to a residential homestead for more than \$5,000 deposit the trust funds in a construction account in a financial institution.

DIGEST: HB 1209 would amend Property Code, sec. 162.003 to define a property owner as a beneficiary of the trust funds in a residential construction contract, including funds deposited into the construction account.

The bill also would amend Property Code, sec. 162.001 (c) to provide that a fee paid to a contractor would not be a trust fund if a contractor and a property owner had a written contract in which the property owner would pay construction costs and a fee to the contractor, and that the fee would be earned as provided under the contract and would be paid or disbursed from the construction account.

The change would apply only to trust funds established after the bill takes effect. This bill would take immediate effect if finally passed by a two-

thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 1209 would establish that a fiduciary duty exists between a builder and a homeowner in the trust fund held for construction expenses. Current law already creates this relationship between builders and their contractors, subcontractors, and material suppliers. Homeowners who are responsible for the repayment of the loan for construction or remodeling projects should have the additional protections provided in this bill. Unpaid subcontractors and suppliers can file a lien against the property and recover from the property owners, but it is meaningless for a property owner to file a lien against the owner's own property. The bill would criminalize a breach of contract and would offer property owners recourse against builders who accept money, but do not complete their work.

**OPPONENTS
SAY:**

No apparent opposition