

Please oppose SB 1425 by Senator Wentworth

SB 1425 will increase construction costs in Texas.

Current law requires owners to withhold 10% “retainage” from their payments to general contractors. In fact, many commercial contracts contain similar clauses in their contracts recognizing the owners’ obligation and right to withhold those funds. Under retainage, an owner will withhold 10% of each payment as the project progresses to both protect subcontractors and vendors. The law requires owners to not pay retainage until 30 days after a construction project is completed.

SB 1425 requires owners to establish one or more construction trust accounts for the benefit of contractors. The owner is required to fund the trust account with the 10% retained as the job progresses. For example, if \$100 of work is done, an owner would still just pay \$90 on the work done (withholding the 10% retainage). But unlike under current law, where an owner is able to limit its borrowing from the bank at the time of payment (keeping interest payments down), this law will require the owner to fund the construction trust account as the job progresses.

SB 1425 will not decrease the time it takes a contractor or a subcontractor to be paid. The bill does not change the time period an owner is required to withhold retainage funds from being paid, so there will be no acceleration in payment times.

SB 1425 provides a special benefit to contractors and subcontractors not available to any other person involved in construction projects, like managers. By requiring an owner to establish a construction trust fund just for retainage, contractors and subcontractors are given a special benefit if an owner goes bankrupt during construction. The funds will be held in trust for their benefit, meaning the contractors and subcontractors will have an additional mechanism to recover money from a bankrupt owner. This puts them in a special advantaged class of creditor, as they are already able to secure their payments with liens on property. Other persons involved in real property operations, like building managers, do not enjoy such protections, and will have to rely on protections afforded unsecured creditors in bankruptcy.

Please oppose SB 1425 to stop the increase in construction costs and to not provide a special non-bankruptcy protection for just one class of creditors.



**International Council
of Shopping Centers**



For questions, please contact Robert D. Miller, Yuniedth Midence Steen, Nef Partida, or Gardner Pate, Locke Lord Bissell & Liddell LLP, (512) 305-4700, or Dana Chiodo, (512) 472-5110