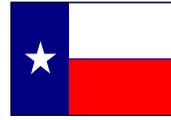


Texas Construction Association

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Texas Legislative Update

The 85th session of the Texas Legislature ended May 29, 2017.

Some of the statistics from the just completed session are as follows:

- House members filed 4,333 bills in 2017 compared to 4,207 bills filed in 2015, with 700 House bills being passed in 2017 compared to 818 House bills being passed in 2015.
- Senators filed 2,298 bills in 2017 compared to 2,069 bills filed in 2015, with 511 bills passed this year compared to 504 bills passed in 2015.
- The Governor vetoed 51 bills in 2017 compared to 43 vetoed in 2015.

The below construction related bills passed the legislature. Information on all bills can be obtained at www.capitol.state.tx.us.

State Breach of Contract – signed by the Governor

SB 2121 *amends existing statutes governing immunity from lawsuit by governmental entities and allows the recovery of attorneys' fees in lawsuits for breach of contract claims under \$250,000.*

School Background Checks – signed by the Governor

HB 3270 *establishes when state mandatory background checks will apply for school construction projects. Workers on school construction projects will no longer be required to submit to a criminal check if they are working on greenfield projects, non-instructional facilities or secure job sites at existing schools.*

Choice of Law and Venue for Certain Construction Contracts – signed by the Governor

SB 807 *extends current law that allows contractors and subcontractors to void clauses in construction contracts that requires disputes to be decided under the law of another state, or for the dispute to be heard in another state, if the project is located in Texas to apply to all project participants, including architects, engineers, suppliers and equipment rental companies.*

Pathways in Technology College High School Program (P-TECH) – signed by the Governor

SB 22 *establishes a P-TECH program for students who wish to participate in a work-based education program to improve student postsecondary achievement and labor market outcomes.*

Insurance for Businesses Participating in CTE Programs – signed by the Governor

HB 639 *authorizes school districts or the governing body of an open-enrollment charter school to obtain accident, liability or automobile insurance coverage to protect a business or entity that partners with the school district or charter school to provide students career and technology training.*

Education Issues

In 2013, the Texas legislature redesigned the public school educational system to provide a better pathway to construction industry careers beginning in high school. This session, there were a large number of education/workforce bills. Below are some of those that passed.

HB 1469 – signed by the Governor

HB 1469 will allow CTE teachers without baccalaureate degrees to teach in charter schools.

HB 2790 – signed by the Governor

HB 2790 will add flexibility for apprenticeship programs offered in school districts.

HB 3706 – signed by the Governor

HB 3706 will add options for alternative education programs for workforce development for at-risk students.

HB 2105 – signed by the Governor

HB 2105 will require more Texas Workforce Commission information to be shared with high school students, including CTE partnerships with businesses and field-based learning opportunities for students.

HB 2994 – signed by the Governor

HB 2994 will allow community colleges to keep formula funding dollars from the state when students under 18 years of age take workforce continuing education CTE courses.

HB 108 – signed by the Governor

HB 108 will allow the Texas Workforce Commission to use money from the skills development fund to support employers expanding in Texas or relocating to Texas who will provide highly skilled or complex employment opportunities.

TCA Priority Issues That Did Not Pass

Lien Law Modernization

HB 3065 would have modernized and simplified the Texas lien law system so that the construction team on a project would be better able to comply with the law and secure their lien rights. Some of the changes to the lien law in the legislation included an early notice system that is consistent with many other states, eliminating several confusing concepts unique to Texas, and providing owners, contractors, claimants, lenders, suppliers and title companies with more timely and accessible information regarding projects via an Internet portal. The law would no longer have required fund-trapping notices or retainage. The modernization would have provided a more reliable close-out procedure which would result in fewer perfected lien claims on projects.

Responsibility for Defective Plans and Specifications

SB 1215 would have established in law that the construction team should not be liable for construction that is defective due to erroneous plans and specifications furnished by the owner. In Texas, contractors are not licensed to prepare construction drawings, but because of two Texas Supreme Court cases, a person who is not allowed to prepare the documents is being required to warranty those documents.

Priority Retainage

HB 2668 would have recognized retainage for what it is—a loan to the construction project by the construction team—and should be protected in a similar fashion as the lender protects its construction loan. This legislation would have accomplished this by providing a priority to a lien for retainage that is equal to the priority of a lender's deed of trust for the construction loan.

Right to Repair

HB 2343 would have required that before a suit is filed or arbitration is initiated, a person making a claim for damages caused by an alleged construction defect must 1) provide a notice to the contractor; 2) obtain an inspection of the alleged defect by a professional engineer and allow the contractor to attend the inspection; 3) obtain a written report from the engineer concerning the alleged defect; 4) allow 150 days after the date of the report for the contractor to correct any construction defect identified in the report.

Statute of Repose

HB 1053 would have reduced the Statute of Repose in Texas from 10 years to 5 years.

Attorney Fees

HB 744 and HB 2457 would have amended Chapter 38 of the Civil Practice & Remedies Code to add "other organization" to Sec. 38.001(a) so attorney fees could be recovered from an individual, corporation or other organization, including partnerships and LLCs, for claims for services, labor or materials.

Selected Other Construction-Related Legislation That Did Not Pass

SB 23 would have required state contractors to participate in the federal electronic verification of employment authorization program, or E-Verify.

HB 1304 and **SB 592** would have established a rebuttable presumption of employment relating to the classification of workers under the Texas Unemployment Compensation Act. The bills called for a penalty of \$200 per employee to be assessed against employers who misclassify their employees.

HB 1477 would have required workers' compensation insurance coverage for building and construction contractors.

HB 2689 would have amended the Government Code to allow a third party to conduct prevailing wage surveys for determining prevailing wage rates for public works contracts and would have required them to be conducted within a three-year period preceding the date the public entity called for bids on a public works project.

HB 3020 would have amended the Education Code to require school districts to give timely written notice to parties when the district brings an action for recovery of damages for the defective design, construction, renovation or improvement to an educational facility.

HB 3434 would have amended the Education Code to adopt uniform general conditions that would have been incorporated in all building construction projects undertaken by school districts.

HB 3913 would have amended the Government Code relating to public works projects to require a governmental entity to hold no more than 5% retainage on a project with a total value of \$1 million or more, and if the governmental entity obtains beneficial use of the project, the retainage withheld could not exceed 2% of the contract price. On projects where the total value of the contract is less than \$1 million and the public entity has beneficial use of the project, the retainage would not exceed one-half of the total retainage under the contract.