



THE 2021 POST LEGISLATIVE SESSION EDITION

TEXAS CONSTRUCTION ASSOCIATION

Working on issues of major importance to the
Texas construction industry

Summer 2021

Message from the President

Following the 2019 legislative session, I wrote a message to you about perseverance. Then, and now, TCA constantly looks for ways to advocate on issues of importance to the construction industry before the Texas Legislature. And I'm proud to say that following a less than stellar session in 2019, we pressed forward on many of our issues and our perseverance paid off.



The 87th Texas Legislature concluded its regular session duties on May 31st and the Governor's veto window closed on June 20th. After all is said and done, the 2021 legislative session was a very successful one for TCA and the construction industry as a whole.

Working with ABC and AGC, we were finally able to pass design defect liability reform. Effective September 1, 2021, contractors will no longer be liable for damages due to defects in design documents provided to them by someone other than their own subcontractors. Additionally, TCA led negotiations with other stakeholders on updates to Chapter 53, Property Code, to make the lien laws more user-friendly and fairer for subcontractors. More information on these and other new laws is included in this issue and can be found in the Government Affairs section of our website www.texcon.org.

Additionally, I'm pleased to announce a new benefit for TCA members: MindForge. MindForge is a dynamic platform for TCA Member Companies to use for an employee communication network to increase work quality and safety. TCA Members enjoy a 20% discount off all products and services, plus a 100% money back policy if not satisfied at the end of the trial period. More about MindForge on page 15 and on the TCA website.

I hope you find this issue informative. Thanks for supporting TCA!

Raymond

Remembering Brianna Wright



The construction industry lost a special person on July 3, 2021. Brianna Wright, the beloved Executive Director for the American Subcontractors Association of Houston for the past 24 years died peacefully in her sleep.

There is quite a lot to cheer and applaud with respect to Brianna! She exemplified everything about being a good leader, mother, grandmother, friend, employee and immeasurably more. Brianna genuinely cared about everyone. In Texas Construction Association board meetings she continually spoke with passion, confidence and was exceptionally loyal to our ASA-Houston member association and TCA. Whenever we needed volunteers or help with events, we knew we could count on Brianna's assistance.

She was not only a colleague to many, but a good friend that will be deeply missed. Brianna's positive attitude through good times and bad resonated with innumerable people and will have a lasting impact on us all.

Brianna's life was too short, yet well and fully lived! Our thoughts and prayers go out to Brianna's husband, David, who has been a champion by her side, and to her family whose loss is exceedingly greater than ours.

Brianna's Life Celebration will be held on October 2, 2021, 4pm-8pm at Bayou City Event Center. All who love her are welcome to join!

October 2, 2021

4pm-8pm

Bayou City Event Center

9401 Knight Road

Houston, TX 77045



2021 New Construction Laws

by Jennifer Fagan

The 87th Legislative session saw big wins for the construction industry in spite of expectations that non-pandemic, non-budget, and non-electricity issues would be placed on the back burner until 2023. After many years of negotiating, reforms were adopted protecting the construction team from liability for defective design documents. Additionally, commonsense changes were made to Chapter 53 of the Property Code governing liens. More statutory changes that impact the construction industry are noted below.

TCA Legislative Agenda Items

S.B. 219 -- Design Defect Liability Reform Clarifies in statute that contractors are not responsible for damages due to defective design documents provided to them by someone other than their subcontractors. Creates a duty for contractors to notify the general contractor or owner, in writing, of a design defect discovered before or during construction. Includes exceptions for critical infrastructure construction, design-build contracts, EPC contracts and contracts that require input or review of the design documents and the contractor provides design input that is incorporated into the project plans. Includes standard of care limitation for architects and engineers.

H.B. 2237 -- Lien Law Update Revisions to Chapter 53, Property Code include: alignment of statutory deadlines with those applicable in other civil proceedings; elimination of second-month notice; adoption of statutory forms for Notice of Unpaid Balance and Notice of Unpaid Retainage; and reduction to the statute of limitations on foreclosure on a lien to one year with an optional second year upon agreement of the parties.

Other TCA-Supported Bills

H.B. 19 -- Keep Texas Trucking Coalition Amends the Civil Practices & Remedies Code to add a chapter specifically for civil actions involving a commercial vehicle. Key reform is the bifurcation of the trial: in phase 1 the trier of fact determines liability of the driver and compensatory damages; and phase 2 addresses liability of the employer and exemplary damages.

H.B. 636 -- Sunset Review of Texas State Board of Plumbing Examiners Codifies some of the Sunset Commission's recommended changes such as requiring fingerprints and background checks; requiring the Board to make information regarding certain disciplinary actions public; streamlining examinations and continuing education requirements; and creating a risk-based approach to on-site compliance checks. The Board is continued until September 1, 2027.

H.B. 692 -- Public Works Retainage Amends Government Code sections relating to retainage on public works projects. (Definition of public works projects includes the "construction, alteration, or repair of a public building or the construction or completion of a public work.") Specifically adds a requirement that the contract include a provision that establishes "substantial completion" of the project; limits retainage to 10% for contracts less than \$5 million, and 5% for contracts greater than \$5 million; and includes flow down provisions to subcontractors.

H.B. 1195 -- Franchise Tax Exemption for PPP Loans Clarifies that federal Paycheck Protection Program (PPP) loans are not to be treated as revenue for the purposes of calculating franchise tax obligations.

H.B. 1247 -- Tri-Agency Framework for Work-Based Learning Sets up the statutory framework for Texas Workforce Commission (TWC), Texas Education Agency (TEA) and Texas Higher Education Coordinating Board (THECB) to jointly develop a strategic plan for improving work-based learning and report to the Legislature before next session.

H.B. 1476 -- Payment Disputes with Public Entities Requires a governmental entity to notify the vendor of a disputed amount and include a detailed statement of the amount in dispute. Limits withholding to no more than 110% of the disputed amount.

Continued on page 19...

"The 87th Legislative Session was monumental for the construction industry in Texas. Lawmakers, industry leaders and other stakeholders worked aggressively and collaboratively together to deliver legislative victories that level the playing field, reduce unnecessary and overly burdensome governmental regulations, further strengthen our civil justice system by guarding against frivolous lawsuits, and strengthen every sector of the Texas economy. Texas is well positioned to lead America forward out of these challenging times - and the construction industry, led by our talented contractors, is at the forefront of doing so."



**Representative
Jeff Leach**

2021 Legislative Session Re-Cap

by Jocelyn Dabeau

In addition to being a productive session for TCA, the Legislature passed a number of major pieces of legislation in what some have characterized as the most conservative session the Legislature has ever had. Key areas include education, abortion, healthcare, electricity grid management, law enforcement, and the constitutionally-mandated biennial Texas budget.

Budget

The Legislature passed two budget bills: **S.B. 2**, the supplementary budget bill, makes necessary changes to the current fiscal year's budget which ends on August 31, 2021; and **S.B. 1** which appropriates \$248.5 billion in All Funds and \$116.4 billion in General Revenue for the 2022-23 biennium which begins on September 1, 2021. According to the outgoing Senate Finance Chair, Sen. Jane Nelson, **S.B. 1** "represents 5.5 percent growth in General Revenue and is well within population and inflation estimates." Highlights of **S.B. 1** and **S.B. 2** include:

- Funding for the full Foundation School Program entitlement, reflecting changes made last session to the school finance formula, including:
 - \$3.1 billion to fund enrollment growth for public education;
 - \$1.1 billion in additional state aid related to property tax compression in the 2022-23 biennium;
- \$8.5 billion for higher education institution formulas, an increase of \$486 million from the previous biennium;
- An additional \$110 million for financial aid programs at the Texas Higher Education Coordinating Board;
- Combined projected funding of \$8.4 billion for mental health across 25 state agencies;
- \$57.6 million to combat human trafficking;
- \$2.2 billion to address cybersecurity, replace legacy systems and upgrade information technology
- One hundred percent appropriation of estimated available Sporting Goods Sales Tax, totaling over \$400 million, to support state parks and historical sites;
- Additional staff resources to strengthen the Public Utility Commission's oversight of ERCOT activities;
- \$26.5 billion dedicated for highway planning, design, construction, and maintenance.
- \$321.3 million to finish construction of the Austin and San Antonio State Hospitals and plan for a new state hospital in the Dallas area;

- \$23.7 million to address the most critical infrastructure needs at our State Supported Living Centers and State Hospitals;
- \$36 million to finish interior facilities in Phase I of the Capitol Complex construction project; and
- \$36 million for Capitol Complex repairs and renovations.

Broadband

H.B. 5 creates a Broadband Development Office that will be identify which areas of Texas have access to broadband and which do not. Areas lacking broadband can then receive targeted support and funding to build the infrastructure necessary to deploy broadband.

Electric Grid Management

S.B. 2 changes the governance of ERCOT, the state's main grid operator. It shrinks the number of seats on ERCOT's board of directors from 16 to 11, and provides the state's top leadership strong influence over the board.

S.B. 3 requires upgrades for power generators and transmission lines to make them better withstand extreme weather. The Public Utility Commission PUC must also establish by rule an emergency pricing program, which must take effect if the high system-wide offer cap ("HCAP") has been in effect for 12 hours in a 24-hour period after initially reaching the HCAP.

H.B. 2586 requires an annual, public audit of ERCOT and **H.B. 16** prohibits wholesale indexed plans for residential customers.



Abortion

S.B. 8, also known as the Heartbeat Bill, prevents a physician from performing an abortion if a fetal heartbeat can be detected, generally after about six weeks (current law prohibits abortion after 20 weeks). Private civil enforcement

Continued on page 18...

Understanding the Redistricting Puzzle

by Eric Woomer

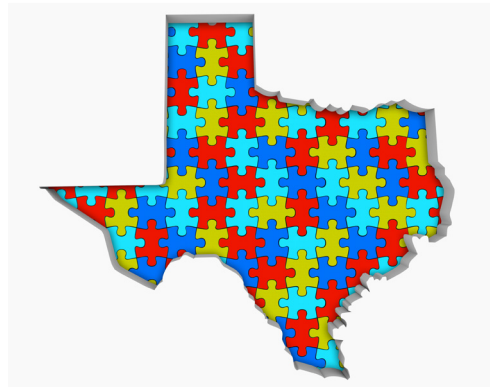
Perhaps the most important, yet least exciting (to the public), activity the Legislature undertakes is slated to begin this Fall -- redistricting. Every 10 years, the federal government conducts a nationwide census to count every resident in the country. This new population data is then used to draw new congressional and state legislative maps. And while the public tends to react with a yawn, lawmakers keen to draw favorable seats pay rapt attention, and the process offers political parties a once-a-decade opportunity to gain or entrench their political advantage.

Redistricting 101

Federal census population data is typically delivered to the Legislature by April 1st following each decennial census, and lawmakers and other interested parties begin drawing plans during a regularly called session. Bills to enact new maps follow the same path through the Legislature as other legislation – public committee hearings, votes on the floor of the House and the Senate, and the possibility of a Governor veto. However, if Texas House and Senate district maps are not adopted during the first regular session following the census, the Texas Constitution requires that the Legislative Redistricting Board (LRB), a five-member body of state officials including the Lieutenant Governor and Speaker of the House, meet and adopt a plan. If federal congressional districts are not enacted during the regular session, the Governor may call a special session to consider the matter; otherwise, a state or federal district court may issue court-ordered plans. Court-ordered plans are also the default if the LRB fails to adopt a House or Senate map.

The Texas Legislature has a fixed number of seats — 31 in the Senate and 150 in the House. This means House and Senate district lines may change, and the number of constituents represented by each member may increase, but the number of lawmakers remains the same. This is not the case with congressional delegations; the 435 seats in Congress are reapportioned each decade relative to each state's share of the U.S. population. Based on preliminary numbers this year, Texas' congressional delegation will increase to 38 seats (up from 36) to reflect Texas' faster population growth relative to the rest of the country. Additionally, when drawing the actual maps, U.S. House districts must be close to equal, sometimes only differing by one or two people; however, Texas law allows a little more variance when drawing state House and Senate districts.

The filing deadline for primary elections in December typically provides six months or so for court challenges and possible re-draws, as well as allowing time for counties to make necessary changes in county election precincts, mail new voter registration cards, etc. Additionally, the Texas Constitution requires a candidate for House or Senate office to have been a resident of the relevant House or Senate district they seek to represent for at least one year before the general election. Thus, any candidate, including currently sitting elected officials, that needs to move and establish a new residence must do so before November 2022.



Redistricting 2021

This year, things are functioning a little differently.... First, the COVID pandemic delayed census operations significantly, so the needed data is slated to be delivered in August, not the usual April 1st. As mentioned above, the Texas Constitution requires the Legislature redraw maps during the first regular session following a census--the next one of those will be in January 2023. Thus, if new maps are to be drawn before 2023, the Governor will need to call a Special Session, likely in the October time frame.

Second, in June, the Governor vetoed Article X of the state budget which holds the budgets for all legislative employees – not just lawmakers' staff. This includes the Texas Legislative Council (TLC) which houses the state's redistricting office, software and analytics, bill drafters, etc. The Comptroller's Office has indicated that August 20th is the deadline for restoration of these funds to prevent disruption of services and delays to the availability of redistricting data and map-drawing software. The restoration of these funds can happen in one of two ways: (1) the Texas Supreme Court overturns the Governor's veto of Article X; or (2) the Legislature passes

Continued on page 19...

Proposed Constitutional Amendments

by Jennifer Fagan

During the 2021 Regular Session, the Legislature adopted eight joint resolutions proposing amendments to the Texas Constitution. These proposed amendments will be on the November 2, 2021, ballot. Prior to the election, the Texas Secretary of State's office will randomly assign each resolution listed below a ballot number.

A brief description of each resolution and the enabling legislation, if applicable, is provided below. The full text of the resolution and/or the associated bill may be found at www.capitol.texas.gov. *NOTE: additional resolutions may be considered and passed during one or more called Special Sessions. The list below only includes those resolutions adopted in the 87th Regular Session.*

S.J.R. 27 Proposing a constitutional amendment to prohibit the state or any political subdivision from enacting a law, rule, order, or proclamation that limits religious services or organizations.

H.J.R. 125 Proposing a constitutional amendment to provide that the surviving spouse of an individual who received a limitation on school district property taxes on the basis of disability may retain the limitation as long as the spouse is at least 55 years old.

S.J.R. 47 Proposing a constitutional amendment to change the eligibility requirements for state judicial offices. Members of the Supreme Court, the Court of Criminal Appeals, and the Court of Appeals would have to be licensed to practice law in Texas and be a resident of Texas (current requirement is licensed to practice law anywhere and be a U.S. citizen)

for the 10-year period preceding election or appointment; a district judge must be licensed to practice law for eight years (current requirement is four years). Additionally, during the required 10 or 8-year period, they may not have had their license to practice law revoked, suspended or subject to a probated suspension.

At least eight proposed amendments will be on the November 2, 2021, ballot.

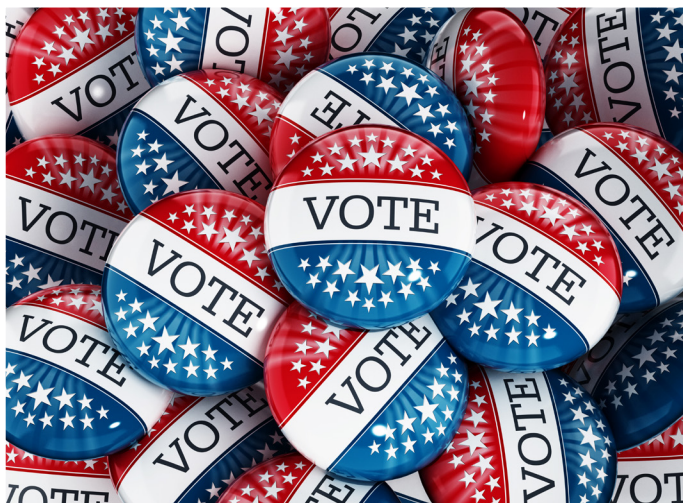
H.J.R. 165 Proposing a constitutional amendment to authorize the Texas State Commission on Judicial Conduct to accept and investigate complaints and reports against candidates running for state judicial office (Current law limits the Commission's jurisdiction to sitting judges.).

S.J.R. 35 (enabling legislation S.B. 611) Proposing a constitutional amendment to expand eligibility for a homestead tax exemption for surviving spouses of members of the military to those fatally injured in the line of duty (Current law is limited to those who are "killed in action").

H.J.R. 143 (enabling legislation H.B. 3012) Proposing a constitutional amendment to authorize the charitable foundation of an organization sanctioned by the Professional Rodeo Cowboys Association to conduct raffles at rodeo venues.

S.J.R. 19 (enabling legislation S.B. 25) Proposing a constitutional amendment to grant residents of nursing facilities, assisted living facilities, or state-supported living centers the right to designate an essential caregiver that may not be prohibited from visiting the resident.

H.J.R. 99 Proposing a constitutional amendment to add counties to the list of political entities authorized to issue bonds to fund infrastructure and transportation projects in undeveloped and blighted areas within the county. ★





Welcome TLPCA!

Texas Lathing & Plastering Contractors Association

The Texas Lathing and Plastering Contractors Association (TLPCA), originated in 1952. A group of builders got together to bring their industry and trade together in the hopes of keeping their foot in the marketplace against the growing use of a product from USG called "sheetrock".

Tobin & Rooney of Houston was part of that group of founding members that started the TLPCA. Ironically, Tobin was good friends with a young man named Bill Marek who was also in the drywall business in Houston.

The TLPCA just celebrated its 69th anniversary at its annual convention and trade show and is looking forward to its 70th

convention in San Antonio next year. What makes the TLPCA different is the comradery between its members, especially when it comes to new innovative materials or applications. Members know that each of them are just a phone call away if they have questions or issues. They are always eager to help each other. ★

Spotlight on Executive Director

★ **Glenn Rex**

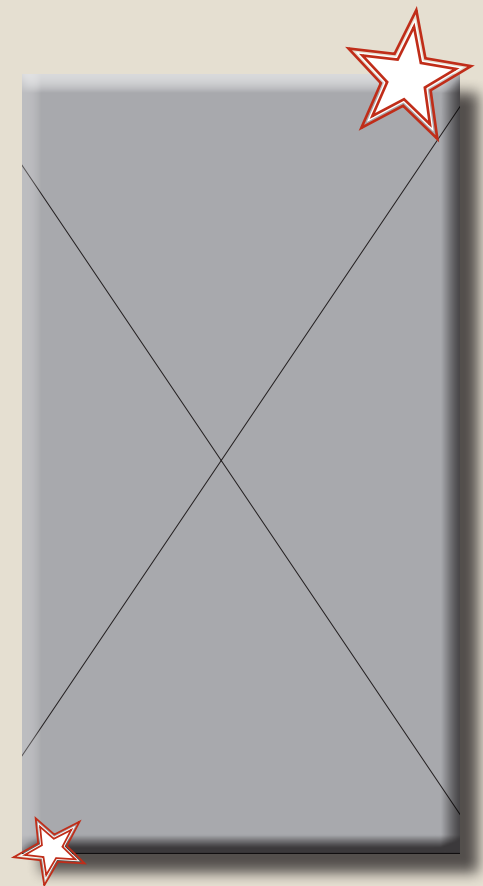
**Mechanical Contractors Association of Texas
& Texas Crane Owners Association**

Glenn Rex is the Executive Director of the Mechanical Contractors Associations of Texas (MCA Texas), a federation of local associations and at-large members from across the state of Texas. Glenn has served in the capacity of Executive Director since 1997. He is also the Executive Director for the Texas Crane Owners Association. Rex, in concert with Jim Reynolds, EVP of the Austin MCA, were active lobbyists working with TCA CEO Raymond Risk and others to advance the issues of the speciality contractor community during the 1990s, and this ultimately led to the formation of the Texas Construction Association.

Glenn has executive association management experience dating back to 1986 when he began his career in the industry as the Executive Director of the Houston Restaurant Association.

Glenn has also served on the Board of Directors of the Construction Career Collaborative (C3) since its inception.

Thank you for being a part of TCA! ★





THE IMPORTANCE OF A POLITICAL ACTION COMMITTEE



By Jennifer Fagan

There's no getting around the fact that elected officials campaign for office on a near constant basis, and frankly -- campaigns cost money. Campaign funds are mostly provided by individuals and Political Action Committees (PACs). A PAC is a tool for a group of individuals with common interests to pool their funds and direct them to candidates for elected office who share the concerns of the group and support their position on issues. Funds from TCA's PAC are allotted by the TCA PAC Board of Directors which is made up of TCA members.

TCA's approach to the actual distribution of checks is to work with our contract lobby team to arrange one-on-one meetings with the elected officials, and where possible, include TCA members in those meetings. This gives our members an opportunity to inform the candidate or elected official about issues impacting the construction industry and TCA member businesses.

Why is it important to have a strong PAC? A well-financed PAC increases the opportunities to connect with elected officials and to educate them on issues of importance to our members. Over time this results in a strong relationship with certain members who become champions for our issues and advocate for us with their colleagues in the Legislature. This provides a basis for TCA's advocacy efforts to pass legislation for our members every two years. The relationships that are built through PAC contributions can also be vital during other circumstances such as a global health pandemic.

In March of 2020, many cities and counties began to issue "stay at home" orders. The first few orders varied as to what types of businesses were able to remain operational and which ones were required to be shuttered. TCA worked with other construction industry groups to reach out to each of our associations' legislative leaders to request that they advocate at the local and state level for the continuation of residential and commercial construction activities during the COVID-19 shutdown.

One of TCA's champions, Rep. Ramon Romero, was instrumental in discussions with the Dallas County Judge in ensuring that Dallas County's "stay at home" order classified residential and commercial construction as essential businesses during the pandemic. This order then became the template used by several other counties across the state. However, there were still some counties or cities with confusing and/or negative orders in place.

Thus, TCA and our industry partners reached out to Governor Abbott, knowing that he was considering a statewide "stay at home" order. On March 31st the Governor issued a statewide "stay at home" order which included the language advocated for by the industry allowing residential and commercial construction to continue.

All of this happened within a very tense 72 hours. Industry advocates in Austin had to move very fast and a key component of our ability to protect the construction industry during this time was our relationships with elected officials – relationships that were used to inform these officials about the importance of allowing residential and commercial construction to continue during the pandemic. This allowed TCA members to keep their businesses operational and to continue to provide paychecks to thousands of construction workers across the state when many Texans were finding themselves unemployed.

Who can participate in the TCA PAC? Membership in the PAC is open to all TCA member companies – their owners, employees and their families. The work done by TCA in Austin impacts every part of your business and thus impacts every single employee. It is important for all of us to band together.

To contribute to the PAC, please visit our website at www.tcapac.org. If you would like more information or would like for a member of the TCA staff to speak to your employees about the work being done in Austin, email Jennifer Fagan, TCA's Vice President for Governmental Affairs, at jfagan@texcon.org. ★





TEXAS CONSTRUCTION ASSOCIATION POLITICAL ACTION COMMITTEE

The Texas Legislature is involved in your business.

Its decisions affect the way you operate your business every day.

The Legislature passes or defeats laws involving your taxes, your tort liability, your contracts, your insurance protection, the roads you travel, the education and regulation of your workforce, and a myriad of other issues.

To have a say in these issues, you have to be involved.

How do you get involved? Contribute to the TCA PAC.

The TCA PAC is organized to make contributions to individuals running for the Texas Legislature and non-judicial statewide offices. Funds are also used to support grassroots efforts by TCA members.

Why should you contribute to the TCA PAC? The TCA PAC is able to pool the resources of numerous construction industry members to have a greater impact than a single individual.

Is this really important? YES! TCA's advocates must have the ability to make contributions to candidates who share your viewpoint. If you don't have a well-funded PAC, you are at a disadvantage because it is guaranteed that your opponents do.

To contribute, visit the TCA PAC website at www.tcapac.org.

2021 Texas Construction



*Senator
Nathan Johnson*

HOUSE BILL 2237 **Lien Law Update**

Joint Authors: **Rep. Dustin Burrows (R - Lubbock)**
Chair of House Calendars Committee
Rep. Joseph "Joe" Deshotel (D - Beaumont)
Rep. Ramon Romero, Jr. (D - Fort Worth)

Sponsor: **Sen. Nathan Johnson (D - Dallas)**



*Representative
Dustin Burrows*

SENATE BILL 219 **Design Defect Liability Reform**

Author: **Sen. Bryan Hughes (R - Mineola)**
Chair of Senate Committee on State Affairs

Sponsors: **Rep. Jeff Leach (R - Plano)**
Chair of House Committee on
Judiciary and Civil Jurisprudence
Rep. Barbara Gervin-Hawkins (D - San Antonio)
Rep. Eddie Lucio III (D - Brownsville)
Rep. Justin Holland (R - Rockwall)

Co-Sponsors: **Rep. Sam Harless (R - Spring)**
Rep. Lacey Hull (R - Houston)
Rep. Valoree Swanson (R - Spring)



*Senator
Bryan Hughes*



*Representative
Jeff Leach*



on Legislative Champions

HOUSE BILL 1476

Payment Disputes with Public Entities

Joint Authors: Rep. Keith Bell (R - Forney)
Rep. Jeff Leach (R - Plano)
Rep. John Cyrier (R - Lockhart)
Rep. Ramon Romero, Jr. (D - Fort Worth)
Rep. Richard Peña Raymond (D - Laredo)

Co-Authors: Rep. Ryan Guillan (D - Rio Grande City)
Rep. Sam Harless (R - Spring)

Sponsor: Sen. Robert Nichols (R - Jacksonville)



*Senator
Robert Nichols*



*Representative
Keith Bell*

HOUSE BILL 1477

Bonds on Private Projects on Public Lands

Joint Authors: Rep. Keith Bell (R - Forney)
Rep. Jeff Leach (R - Plano)
Rep. John Cyrier (R - Lockhart)
Rep. Ramon Romero, Jr. (D - Fort Worth)
Rep. Richard Peña Raymond (D - Laredo)

Co-Authors: Rep. Ryan Guillan (D - Rio Grande City)
Rep. Sam Harless (R - Spring)

Sponsor: Sen. Robert Nichols (R - Jacksonville)



*Representative
Hugh D. Shine*

HOUSE BILL 692

Retainage on Public Works Projects

Joint Authors: Rep. Hugh D. Shine (R - Temple)
Rep. Keith Bell (R - Forney)
Rep. Cecil Bell, Jr. (R - Magnolia)
Rep. Drew Darby (R - San Angelo)

Co-Author: Rep. John Kuempel (R - Seguin)

Sponsor: Sen. Brandon Creighton (R - Conroe)



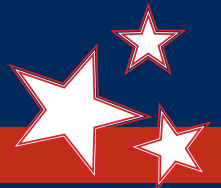
*Senator
Brandon Creighton*



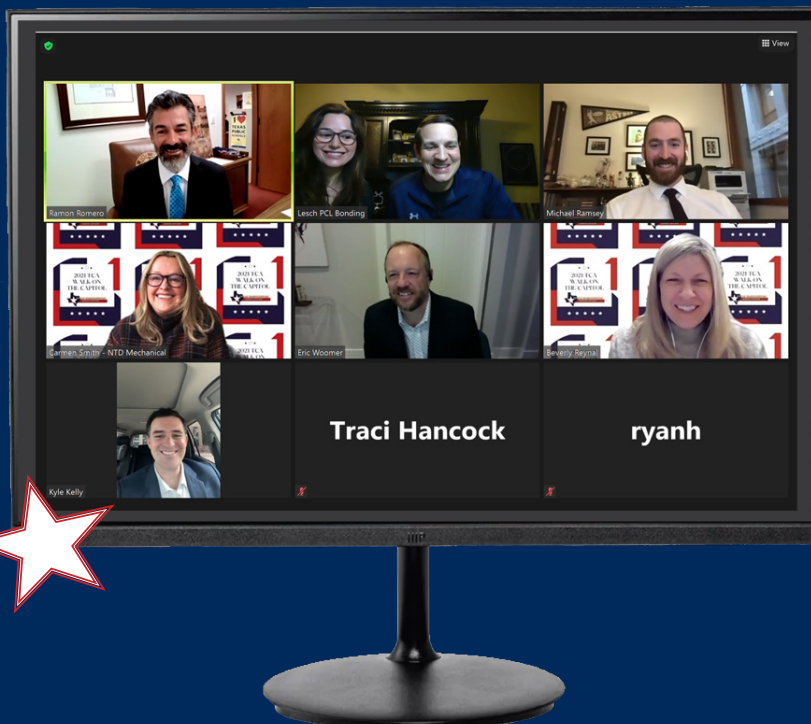
2021 Virtual Walk on the Capitol

As with many events over the last 18 months, TCA's biennial Walk on the Capitol went virtual in 2021. We kicked off the Walk with a TCA lobby team panel discussion and followed that with an in-depth discussion of TCA's legislative issues. And once again, our Member Association executive directors did an awesome job setting up virtual meetings with elected officials across the state.

Prior to the Walk, each legislator's office received a fun box of goodies from TCA along with briefing materials on our issues. Even amid a pandemic we were able to have a little fun!



**Thank you to all
who participated in
the virtual Walk
this year.
We look forward
to seeing you
in person at the
2023
Walk on the Capitol!**



Texas Lawmakers Make Progress on Education-to-Workforce Alignment

by Mike Meroney, Associated Industries of Texas

While lawmakers at the Texas Capitol were busy tackling the state budget, COVID pandemic response, and the aftermath of electricity outages from Winter Storm Uri in February, they were also quietly able to make significant progress in education-to-workforce alignment issues during the legislative session.

CTE Funding and “Programs of Study” in High Schools

Under the public school finance clean-up bill – H.B. 1525 by Rep. Dan Huberty – the formula funding for career and technical education (CTE) was changed to better align to “programs of study,” including coherent sequences of courses, industry-based certifications, and work-based learning to ensure students are prepared for in-demand, high-skill, high-wage careers in Texas. The new formulas reward local school districts for offering CTE courses in an approved program of study, and also pay a higher reimbursement rate for more advanced CTE courses. Additionally, H.B. 773 by Rep. Gary VanDeaver adds an indicator of achievement in the complicated A-F public school accountability system when students are able to complete a program of study by the time they graduate from high school.

Another bill – H.B. 3938 by Rep. Keith Bell – transfers the development of the recognized industry-based certifications (IBC) list to a new Industry Based Certification Advisory Council comprised of nine members – three from business and industry, three from CTE teachers or administrators, and three from community colleges or Texas State Technical College (one each appointed by the Governor, Lt. Governor, and Speaker of the House). The Texas Workforce Commission will offer staff support and the advisory council will coordinate with local workforce boards and other state agencies to ensure that industry-based certifications offered in high schools are most appropriately aligned with the current and future workforce needs of their communities, regions, and the state.

Higher Education and “Tri-Agency Initiative”

For employers seeking to collaborate with a higher education partner to serve their specific needs, a public community or junior college will have the “first right of refusal” to meet those needs under H.B. 4361 by Rep. John Raney. And if the community college is unwilling or unable to do so, local employers will be able to invite competing colleges or workforce-training providers to partner with them. This new law could be a real game-changer for businesses or industries in under-served communities.

H.B. 3767 by Rep. Jim Murphy will make permanent the temporary “Tri-Agency Initiative,” which is the collaborative work of the Texas Education Agency, Texas Workforce Commission, and Texas Higher Education Coordinating Board. With this new law, these agencies will work together to:

- Identify statewide workforce goals, including attainment of self-sufficient wage jobs.
- Designate career pathways for occupations aligned with current workforce needs and for forecasted, high growth careers and skills.
- Evaluate career education and training programs across Texas based on the workforce outcomes of program participants to ensure transparency and accountability in how the state spends its workforce dollars.

The three agencies will also modernize their data systems to better serve all Texans, including: a) creating tools that enable average Texans to evaluate workforce programs; b) building a platform to provide students with information on employment outcomes and earning potential for possible career pathways; and c) creating and making public an easily accessible and unified dashboard with data on the state’s progress toward meeting its workforce development goals. And H.B. 1247 by Rep. JM Lozano requires the three state agencies develop a strategic framework to encourage work-based learning – opportunities like internships, apprenticeships, and on-the-job training programs.



Continued on next page...

Education-to-WorkForce Alignment *Continued from page 13..*

In response to the rising unemployment rate during the COVID-19 pandemic, there have been calls to re-skill and up-skill the state's workforce to put Texans back to work in high-demand occupations, and accelerate the Texas economic recovery.

S.B. 1102 by Sen. Brandon Creighton establishes the Texas Re-skilling and Up-skilling through Education (TRUE) Initiative to support workforce education at public junior colleges and assist in expanding activities that promote workforce learning in the targeted industries and occupations. And funding for competitive grants will likely be debated during a special session later this Fall when legislators return to Austin to appropriate \$16 billion in federal relief funds.

S.B. 1230 by Sen. Larry Taylor creates the Texas Commission on Community College Finance to study state appropriations (formula funding for instruction, healthcare employee group insurance proportionality, etc.) for public community and junior colleges. The new commission will make recommendations to be considered by the next Texas Legislature in 2023 for establishing a state funding formula and funding levels sufficient for sustaining viable community college education and training offerings throughout the state.

Finally, in the state budget, lawmakers fully funded the "returned value funding formula" by Texas State Technical College (TSTC), which pays that institution based on their graduates' incomes, not contact hours in the classroom. The funding system rewards quality technical training, employability, and placement in a job, which is mutually

beneficial to students, employers, and the state's economy.

Associated Industries of Texas (www.aiotexas.com) is a Texas non-profit trade association built to represent industry employers working in collaboration with vocational and trade schools, government agencies, industry associations, suppliers, and other stakeholders committed to promoting and producing a new generation of skilled laborers to power the Texas workforce.

The mission of AIT is to build and maintain a coordinated, unified, focused, and effective effort to promote skilled trade jobs in Texas, thereby greatly enhancing Texas' ability to compete as a major player in the global economy and provide a secure financial future for Texans and their families. Become a member here: <https://www.aiotexas.com/membership>. ★

The Legislature recognized the need to re-skill and up-skill the state's workforce to put Texans back to work in high-demand occupations, and accelerate the Texas economic recovery.



2021 SPORTING CLAY SHOOT

*Benefitting the
TCA ★ PAC*

*Hosted by
Houston-Area Subcontractors*

Registration at 1pm

Shooting at 2pm

Dinner & Awards 5:30pm



SAVE THE DATE!

**BREAK AWAY,
JOIN US!**

TUESDAY, OCTOBER 12TH

at the

**Greater Houston Sports Club
6700 McHard Road, Houston, TX 77053**



SPONSORSHIPS AVAILABLE!

**Contact Patrick
pfinnegan@texcon.org**

What is MindForge?

Developed with the help of industry leaders, MindForge is a platform that allows you to establish a communication network with your field personnel and put just-in-time information and education in the palm of their hand. With efficient knowledge sharing across all crews, you will save time, increase your work quality, and empower your workforce to stay safe.

Deliver successful projects by utilizing tools that **rapidly share knowledge and information with your field crews.**

Learn more at: www.mindforge.live

“MindForge will have a significant impact on our organizational communication, training protocol, and most importantly, the safety of our people.”

Tricia Kagerer
Executive VP, Jordan Foster

Stay Up to Date on the Texas Construction Industry!



Find Us Online!
www.texcon.org



Scan for TCA Updates

Facebook

Texas Construction Association



YouTube

Texas Construction Association



Twitter

@Texcon1



LinkedIn

Texas Construction TCA



Instagram

Texcon1





Gina O'Hara
Program Administrator for
Texas Construction Safety Group

Our Texas Mutual Safety Group program is continuing to have phenomenal success in growth, dividends and loss ratios. As of June 30, we had reached a group premium of \$74 million with 1840 policy holders. Our current loss ratio is 22.6% which has us comfortably in dividend range so far for this term. The payroll represented for our members is over \$4.1 billion.

Thank you to all of the TCA members who are utilizing this benefit. Your participation makes the work of TCA possible.

To those of you who aren't participating currently, the examples below might be eye-opening to you. This is the Texas Mutual dividend history for three of

our members. This is a combination of the regular dividends along with the safety group dividend. Dividends are not guaranteed, but Texas Mutual has a track record of never missing a year in paying one. The longer a company is insured with Texas Mutual and in the safety group, the higher the percentages can be because the Texas Mutual dividend has a loyalty component.

Accessing the insurance group is simple. Just ask YOUR agent to request a quote in the group from Texas Mutual. Additional answers can be found at www.TXConstructionWC.com or by calling me, program administrator, Gina O'Hara at 512-330-9836, ext. 6324. info@txconstructionwc.com ★

Texas Mutual Dividend Examples

Example 1 - Painter

<u>Policy Effective</u>	<u>Total Premium</u>	<u>Company Dividends</u>	<u>TCA Safety Group Dividends</u>	<u>5 Yr. Net Premium</u>	<u>% Premium Returned</u>
2015-2020	\$194,159	\$129,241	\$16,348	\$56,570	70.86%

Example 2 - Mason

<u>Policy Effective</u>	<u>Total Premium</u>	<u>Company Dividends</u>	<u>TCA Safety Group Dividends</u>	<u>5 Yr. Net Premium</u>	<u>% Premium Returned</u>
2015-2020	\$565,940	\$175,100	\$46,277	\$344,563	39.12%

Example 3 - Electrician

<u>Policy Effective</u>	<u>Total Premium</u>	<u>Company Dividends</u>	<u>TCA Safety Group Dividends</u>	<u>5 Yr. Net Premium</u>	<u>% Premium Returned</u>
2015-2020	\$98,994	\$33,735	\$7,095	\$58,164	41.24%

CONSTRUCTION AND COVID-19 SAFETY



Recommended Safety Precautions

See TCA's home page at www.texcon.org for more extensive resources on COVID-19.

- **MONITOR** local, state and federal authorities' recommendations concerning the pandemic. Use the latest information to inform safety protocols on the jobsite.
- **SHARE** information about the pandemic with employees.
- **TRAIN** workers on the signs and symptoms of COVID-19 and how the disease is spread, including that infected people can spread the virus even if they do not have symptoms.
- **DISINFECT** all shared spaces, as well as portable toilet and hand-washing facilities. Keep hand-sanitizer dispensers filled and readily available.
- **PRE-SCREEN** workers before entry to assess potential exposures and circumstances in the work environment.
- **ENFORCE** the wearing of masks over noses and mouths to help prevent spreading the virus in aerosol droplets.
- **ENACT** tight controls over jobsite access, including screening of all visitors to a construction site in advance of arrival.
- **EDUCATE** the workforce on the types, proper use, limitations, locations, handling, decontamination, removal and disposal of any personal protective equipment (PPE) being used.
- **LIMIT** in-person meetings as much as possible, limit the number of workers in attendance, and implement social-distancing practices.
- **IDENTIFY** and minimize choke points where workers stand together, such as hallways, hoists and elevators, ingress and egress points, and break areas.
- **KEEP** 6 ft of distance between passengers in elevators and personnel hoists, and equip operators with the appropriate respiratory protection and other PPE.
- **COORDINATE** site deliveries for minimal contact. Have delivery personnel remain in their vehicles if possible.
- **ADOPT** staggered work schedules. Provide alternating workdays and/or extra shifts to help minimize the number of employees on a jobsite at a given time.
- **ENSURE** that shared indoor spaces have good airflow, such as by turning on an air-conditioner or opening windows.



for violations, as well as for aiding and abetting, are available once the bill becomes effective.

H.B. 1280 provides that if the Supreme Court reverses its rulings under *Roe v. Wade* and *Planned Parenthood v. Casey*, either fully or in part, Texas law will, after 30 days, prohibit the practice of abortion to the extent allowable under the new precedent.

Second Amendment/Guns

H.B. 1927 allows for the open carry of handguns by eliminating the requirement for Texas residents to obtain a license to carry handguns if they're not prohibited by state or federal law from possessing a gun. Maintains the ability of businesses to prohibit the carrying of weapons on private property by posting of a specifically-designed sign at each entrance.

S.B. 19 prevents any company with at least 10 employees from bidding on state or other government contracts valued at \$100,000 or more unless the company verifies in writing that it does not have an internal policy or directive that discriminates against members of the lawful firearm or ammunition industries.

Healthcare

H.B. 3924 allows the Texas Farm Bureau to offer healthcare coverage to members of the Texas Farm Bureau, without the requirement that such plans comply with most insurance mandates, either state or federal.

H.B. 3752 allows a subsidiary of the Texas Mutual Insurance Company to offer healthcare benefits to member companies, as well as to other groups and individuals. Coverage would not be considered "insurance" under state law and would not be required to comply with mandated coverage benefits applicable to traditional insurers. The coverage authorized by this bill cannot be offered until September 1, 2023.

H.B. 2090 expands upon federal legislation that requires health plan issuers to disclose price information. It requires the UT Health Science Center to establish a mandatory all claims payer database (ACPD) to be up and running by 2023.

H.B. 1535 expands medical use of low-THC cannabis (for cancer and PTSD).

Law Enforcement

S.B. 23 requires counties of over 1 million residents obtain voter approval before implementing any law enforcement budget cuts.

S.B. 69 prohibits officers from applying deadly pressure to a person's throat, neck, or torso, blocking a person's nose or mouth, or impeding a person's circulation unless the officer is protecting themselves or another person from serious bodily injury or death.

H.B. 1900 provides that if a city funds its police department at a level lower than it has for the past two fiscal years, it loses its right to raise property taxes more than it did the year before. The state will also hold back sales tax revenue for cities that cut their police budgets and reappropriate some of that money to the Texas Department of Public Safety.

Miscellaneous

S.B. 4 provides that a governmental entity may not enter into an agreement with a professional sports team unless the United States national anthem will be played at the beginning of each team sporting event.

S.B. 30 provides a process to remove deed restrictions that discriminate on the basis of race, color, religion, or national origin through the county clerk's office.

S.B. 25 allows people to designate an essential caregiver that must be allowed into long-term care facilities.

H.B. 1925 creates a statewide ban on public camping by homeless individuals.

S.B. 1385 allows student athletes at Texas institutions of higher education to earn compensation for use of their name, image and likeness.

S.B. 797 requires public schools and institutions of higher education display the national motto, "In God We Trust".

H.B. 1024 authorizes delivery of alcoholic beverages for off-premises consumption -- "alcohol to go". ★

ATTENTION! New changes are coming for lien and bond claims beginning January 1, 2022.

The 87th Legislature passed H.B. 2237 which amends Chapter 53, Property Code provisions relating to lien and bond claims. The most significant changes include: (1) elimination of the 2nd month notice; (2) standardized Notice forms; (3) changes to the deadline to file a retainage lien; (4) deadlines falling on holidays/weekends extended to next business day; (5) elimination of the requirement that Lien Releases/Waivers be notarized; and (6) reduction to the Statute of Limitations to file a suit to foreclose on a lien.

More information may be found under the Education tab on the TCA website: www.texcon.org. There you will find a recording of TCA's Legislative Update Webinar from August 3, 2021.

2021 New Construction Laws *Continued from page 3 ...*

H.B. 1560 – *Sunset Review of Texas Commission of Licensing & Regulation (TCLR) and the Texas Department of Licensing & Regulation (TDLR)* Revises statutes relating to complaints and includes a provision requiring the Department to post a statistical analysis of complaints. Requires the Department to conduct risk-based inspections and transfers certain duties relating to continuing education programs from TCLR to TDLR. Continues the agency until September 1, 2033.

H.B. 2416 – *Attorney's Fees as Compensatory Damages* Clarifies Civil Practices & Remedies Code to state that attorney's fees in a suit for breach of a construction contract are compensatory damages; therefore, creating an expectation of insurance coverage.

H.B. 2581 – *Bidding on Public Contracts* Requires all governmental entities, rather than just state agencies, to publish a detailed methodology for scoring. Requires release of scoring evaluations to an offerer upon request. For civil works projects, weighted value assigned to price must be at least 50% unless there is a finding of public interest and then it may be lowered to 36.9%. All bid evaluations are to be made public within seven business days after the contract is awarded.

H.B. 3069 – *Statute of Repose on Public Projects* Reduces deadline for a governmental entity to bring suit against a

design professional or a contractor from ten to eight years after substantial completion of the project with a one year extension. Excepts contracts with the Texas Department of Transportation and civil works projects.

S.B. 6 – *Pandemic Liability* Establishes limits on liability relating to a pandemic. Regarding liability for causing exposure to a pandemic disease, a person is not liable unless the claimant can establish: (1) the person knowingly failed

to warn the claimant of a condition that the person knew was likely to result in disease exposure; and (2) the person failed to implement official standards, guidance or protocols intended to lower the likelihood of exposure. Provides express exemption from liability for persons who donate personal protection equipment.

S.B. 291 – *Construction Jobsite Posting* Requires commercial building project developers to post name and contact information and a description of the project at the entrance to the jobsite.

S.B. 968 – *Omnibus Pandemic Bill* Amends the Government Code to expressly state that a political subdivision may not issue an order during a declared state of disaster that would limit or prohibit commercial or residential construction. ★



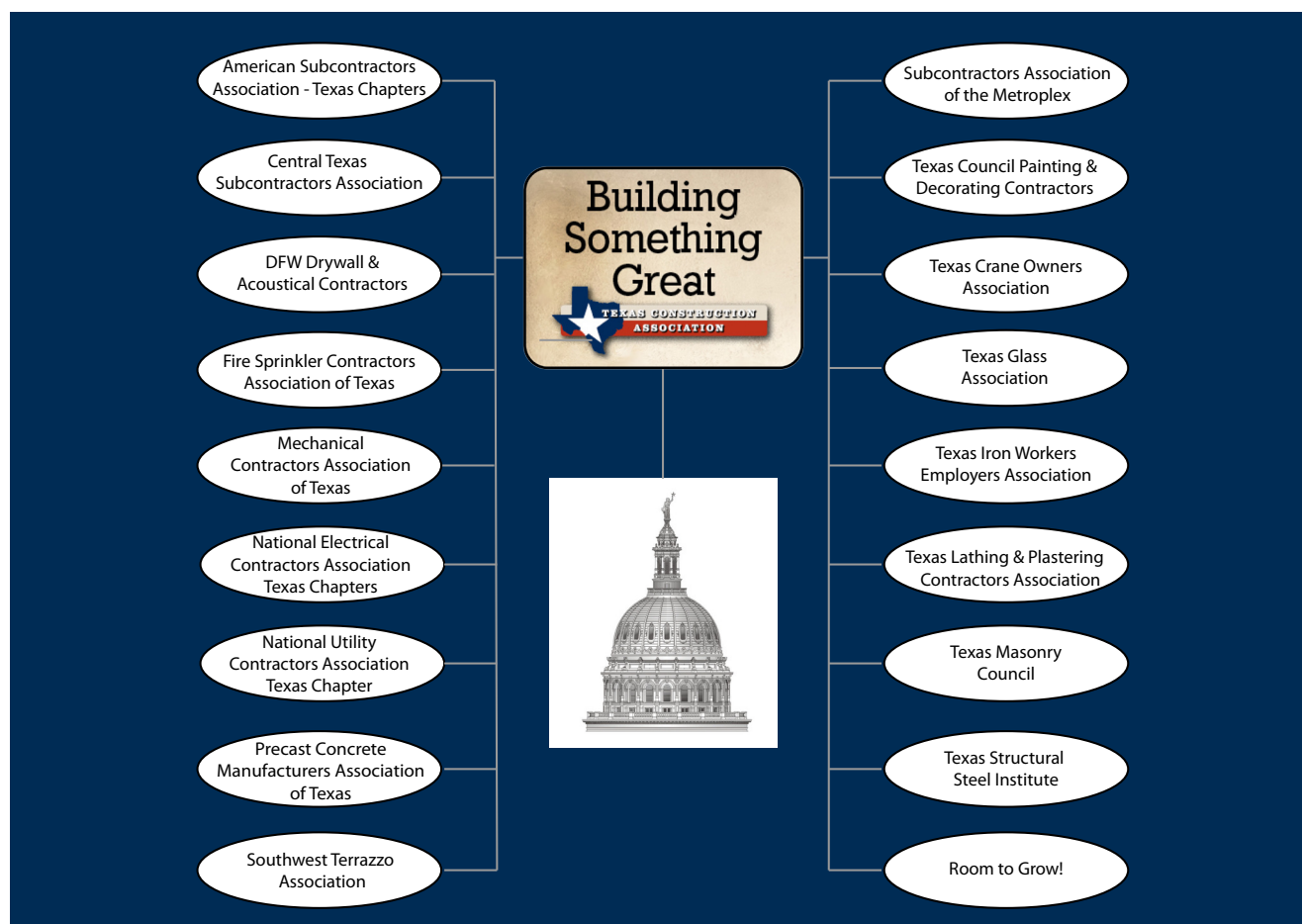
Understanding the Redistricting Puzzle *Continued from page 5...*

an appropriation bill during a Special Session and it is signed by the Governor. Both of these options are fraught with issues.

So, there is a delay in redistricting this year, but as of now we simply don't know how long it will last. What does this mean? Conventional wisdom says the Governor will call a Special Session during which the Legislature must attempt to draw new maps. Under normal circumstances, if the Legislature fails to do so, the LRB would then perform this function. However, legal scholars differ on whether the LRB can constitutionally convene and draw maps after a Special Session of the Legislature as opposed to a Regular Session of the Legislature. If the LRB cannot convene, it would be a big blow to the GOP since every member of the current LRB is a Republican and if there are no legislatively or LRB-drawn maps for the courts to start from there could be substantial changes to Texas's House, Senate and congressional districts in a court-drawn product because courts generally give less deference to incumbency than elected officials. Regardless of whether the LRB meets, there will be a very small window

for lawsuits and court rulings between map-drawing and the candidate filing deadline for the 2022 primary elections. This is compounded by the federal and state requirement that military ballots be mailed 45 days before an election. Therefore, the delay in redistricting will inevitably result in delaying the 2022 primary elections, possibly for several months. The only alternative is for the Governor to wait and let the Legislature perform its constitutional duty during the regular session in 2023; however, that is a political gamble that the GOP may not be willing to make.

Why does all of this matter? Since legislative and congressional maps are in place for a decade, redistricting, and the incumbent protection that comes with it, greatly affects the balance of power between parties in the Texas House and Senate, as well as the U.S. Congress. With an 18-13 GOP advantage in the Texas Senate, an 87-63 GOP advantage in the Texas House, and a 220-211 Democrat advantage in Congress, every seat counts. Redistricting in 2021 will be interesting for political watchers everywhere – and it might even catch the interest of the general public. ★



Texas Construction Association Board of Directors

OFFICERS

Jerry Bratton - Chair
Texas Structural Steel Institute

David Stone - Vice Chair
Fire Sprinkler Contractors
Association of Texas

Chris Lambert - Secretary
Central Texas
Subcontractors Association

Andy Adams - Treasurer
American Subcontractors Association
Houston Chapter

Raymond Risk - President / CEO
Texas Construction Association

DIRECTORS

Carmen Autry
American Subcontractors Association
Texas Chapters

Kevin Camarata
Texas Masonry Council

Brian Chester
American Subcontractors Association
North Texas Chapter

Keith Colvin
Texas Iron Workers
Employers Association

Roger Fisher II
Texas Council - Painting & Decorating
Contractors of America - Dallas

Fred Heldenfels IV
Precast Concrete Manufacturers
Association of Texas

Jeff Henkener
Mechanical Contractors
Association of Texas

Paul Holden
Subcontractors Association
of the Metroplex

Mike Kanetzky
National Electrical
Contractors Association
Texas Chapters

Robbie Ketch
DFW Drywall & Acoustical
Contractors Association

Ronnie Gonzales
Southwest Terrazzo Association

David Mouton
Texas Lathing & Plastering
Contractors Association

Felix Munson
Texas Glass Association

Courtney Talley
National Utility Contractors
Association - Texas

Allan Woodruff
Texas Crane Owners Association

LEGAL COUNSEL

Fred Wilshusen
Thomas, Feldman, & Wilshusen LLP