



TEXAS CONSTRUCTION ASSOCIATION

NEWSLETTER

Spring 2015

REPRESENTING TEXAS SUBCONTRACTORS AND SUPPLIERS

2015 TEXAS LEGISLATURE ROLLING

The 84th Texas Legislature convened on January 13, 2015. TCA staff and members are continuing discussions that have taken place over the last 1-1/2 years to acquaint legislators with subcontractor and supplier issues and to seek their support of TCA's legislative agenda. In addition, over that same time period, TCA staff and members have participated in numerous meetings with groups both supporting and opposing the TCA initiatives that are now being brought before the Legislature. As in 2013, our agenda is ambitious, but the issues are important for all of TCA member businesses and their employees. The following is a summary of the priority legislation set by the TCA board.

Consolidated Insurance Programs. HB 1206 by Representative Dan Huberty (R-Houston) and SB 1081 by Senator Brandon Creighton (R-Contoe) Consolidated insurance programs (CIPs) are insurance programs in which a principal, usually an owner or general contractor, provides insurance coverages that are bundled into one insurance program for a single construction project or multiple construction projects. They are also known as WRAPS, OCIPS, CCIPS, ROCIPS. The program typically provides coverage for each entity on the project, from the general contractor to the subcontractors and their employees, for general liability, workers' compensation, and builder's risk. When coverage on a construction project is provided through a CIP, savings are achieved through an economy of scale, and the general contractors and

subcontractors are expected or required to lower their bids for the project to reflect the insurance costs they would have included in their bids. In many cases where construction projects are covered by CIPs, subcontractors do not have an opportunity to examine the policy or learn the extent of coverage provided by the CIP prior to bidding or beginning work on a project. Because of this lack of notice, a contractor or subcontractor does not have enough in-



formation to accurately predict the credits, deductibles, and other costs that may be assessed to them. Construction specifications for a construction project that may be covered by a CIP should provide notice that the project may be covered by a CIP. In addition, prior to the execution of a construction contract under a CIP, the persons entering into the contract should be provided written disclosures, which would include the scope of coverage and limits for each policy under the CIP. HB 1206 and SB 1081 call for the notice requirements for CIPs as outlined above put into law.

Lender Notice to Contractors. HB 1208 by Representative Cecil Bell, Jr. (R-Magnolia) There is no law in Texas that requires a lender on a construction project to give any notice to subcontractors and prime contractors when a lender determines that it will cease or suspend funding a construction financing agreement. Without this notice, subcontractors, prime contractors and suppliers continue to work, with materials and labor being expended on a project that will no longer be funded and with no assurances they will be paid for their work. If prime contractors and subcontractors are not made aware of the decision of a lender to no longer fund a construction loan, they will continue to work on a project, and may never receive payment for that labor and materials provided subsequent to the lender's decision to no longer fund the project. In 2011 and 2013, a lender notice bill was filed but the legislation did not pass. HB 1208 will require lenders by law to give notice to contractors, who in turn would give notice to subcontractors that the lender has determined that

Continued on page 3...

In This Issue

President's Message.....	2
Texas Legislature 101.....	4
Houston Clay Shoot.....	5
TCA PAC Roundup & Walk on the Capitol.....	6

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Message from the President

The 84th session of the Texas Legislature is well underway. Your TCA lobby team is working to advance all of the TCA priority issues as well as other important construction related issues. This issue provides information about each of the TCA priority bills, as well as other legislation that affects the construction industry. We've also included some information on the Texas legislative process as a refresher for some and an introduction for others.

We had a great turnout for TCA's 2015 Walk on the Capitol and TCA*PAC Roundup. Over 150 of your fellow members and colleagues spent a day in Austin educating lawmakers on TCA's priority issues. Thanks for all of the participants, sponsors, and TCAPAC donors, and member association executive directors who came together to make the day a great success.

The legislature is heating up! Please watch for Legislative Alerts from TCA. These "call to actions" require your immediate attention. Your response to these alerts can be THE difference in how your legislator votes. Be vigilant. The session ends June 1.

Raymond



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2015 Texas Legislature Rolling Continued...

it will no longer disperse funds that are part of the loan for the construction project. The law would allow the contractor and subcontractors the opportunity to stop working on a project when this notice is given. The lender should not be enriched at the expense of the people furnishing labor and materials to improve the property.

Retainage Trust Fund. *HB 1966 by Representative Jim Keffer (R-Eastland).* Texas law requires non-public property owners to withhold 10% of the value of the work that is performed by a contractor and subcontractor under a construction contract until completion of the work. This 10% is called retainage. In situations where a lender is providing construction financing, typically the lender only funds a loan amount for 90% of the value of the work each month and does not fund the remaining 10% until the project is finished. When a loan default occurs, the 10% not funded by the lender does not get paid to the construction team. If the owner of a construction project funds construction with a loan from a lender and the 10% retainage is not transferred to the owner each time the lender advances loan proceeds, then contractors and subcontractors and others entitled to the retainage often do not get paid if the owner defaults on the construction loan. TCA is seeking passage of legislation that would require the owner to set aside in a separate trust account the retainage amount not paid each month to contractors and subcontractors for construction costs during the life of a project to ensure that those contractors and subcontractors will be paid the retainage to which they are entitled. This trust account can be a simple bank checking or savings account and does not require a lawyer-prepared trust agreement. HB 1966 allows the owner to purchase a retainage bond as an alternative to setting aside the retainage in a trust account.

Worker Classification. *HB 434 by Representative Senfronia Thompson (D-Houston).* Misclassification of employees as independent contractors, also known as workplace fraud, is widespread in the construction industry in Texas. In one major metropolitan area of the state, it is estimated that as a result of construction workers being misclassified by their employers as independent contractors an

estimated \$9 million in revenue in that area is lost as a result of unpaid state unemployment insurance taxes and federal taxes. Employers who misclassify their workers have a competitive advantage in bidding for jobs and divert work from employers who do pay taxes, overtime and workers' compensation premiums for their workers. In addition, the consequences for those employers violating the law are not strong enough to deter them from continuing their practice of misclassifying their workers. TCA is seeking passage of legislation that will set forth distinct and clear criteria that defines what constitutes an independent contractor in the construction industry. HB 434 sets a penalty of \$100 per employee misclassified for the employers first offense. If the employer is again found to be in violation of the law, the Texas Workforce Commission can fine an employer up to \$1,000 per employee.

Other Selected Construction-Related Issues

Mandatory Workers Compensation. *HB 689 by Rep. Armando Walle (D-Houston) and SB 155 by Sen. Jose Rodriguez (D-El Paso)* would establish mandatory workers compensation coverage for all building and construction contractors.

E-Verify. *HB 889 by Rep. Tony Dale (R-Cedar Park) and SB 401 by Sen. Charles Schwertner (R-Georgetown)* would require any contractor or subcontractor providing goods or services to a state agency to register with and participate in the E-verify program to verify employee information during the term of the contract with the agency.

State Breach of Contract. *HB 1124 by Rep. Paul Workman (R-Austin)* will further strengthen the changes made to the waiver of sovereign immunity for state breach of contract legislation passed in 2013.

Report by the Comptroller Regarding the Misclassification of Employees. *HB 1714 by Rep. Rene Oliveira (D-Brownsville)* would require the comptroller of public accounts to prepare a report on the extent to which employers in

Texas misclassify employees as independent contractors. The report must include an analysis of the economic impact of misclassification on wages, unemployment insurance taxes and federal income and social security taxes. The analysis must also include information on the availability of health benefits, pension benefits, workers' compensation coverage and unemployment compensation benefits to a misclassified employee.

Decreasing Liability Incrementally Through the Statute of Repose. *HB 1784 by Rep. Workman* provides for a decreasing liability of 10 percent per year for defects in construction or repair of an improvement to real property through the Statute of Repose.

Licensing Requirements for Construction Contractors. *HB 3148 by Rep. Eddie Rodriguez (D-Austin)* would require all construction contractors in Texas to be licensed by the Texas Department of Licensing and Regulation.

Limiting Retainage on Public Works Projects and Requiring Retainage to Be Deposited in an Interest-Bearing Account For the Benefit of the Prime Contractor. *HB 3939 by Rep. Paul Workman (R-Austin)* would limit retainage on public works contracts to five percent without the consent of all parties to the contract and would require that all retainage be deposited in an interest-bearing account for the benefit of the prime contractor. In addition, the retainage may not exceed one percent of the contract price if the public work covered by the contract is capable of being used for the intended purpose of the public work.

Public Private Partnerships. *HB 2475 by Representative Charlie Geren (R-Fort Worth)* would establish a center for alternative finance and procurement within the Texas Facilities Commission to consult with governmental entities regarding best practices for procurement and the financing of qualifying public private partnership projects and to assist governmental entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and management of qualifying public private partnership projects. ★

Texas Legislature 101

The Texas Legislature Process of Passing a Bill

For those new to it and even for those who have had some experience with it, the legislative process is difficult to understand. For those venturing into this arena for the first time and for those who have participated in it before, the overview below of the Texas Legislature and its legislative process will hopefully help you better understand what goes on at the Capitol for 140 days in odd-numbered years.

The Legislature

The Legislature is the lawmaking body in Texas. It is a bicameral system, meaning it consists of two legislative chambers – the Senate and the House of Representatives, just like the U.S. Congress.

The Senate has 31 members, with each member representing on average approximately 811,000 residents. **The House of Representatives has 150 members**, with each member representing on average approximately 168,000 residents.

Senate members are elected for a four-year term. House members are elected for a two-year term. All legislators must be U.S. citizens, qualified voters when elected, and residents of their represented district for one year prior to election. Members of both houses are elected in districts that are based on the U.S. Census and those districts are established or “drawn” so that approximately the same number of Texans is in each district.

The Legislature meets in Austin for the Regular Session every two years beginning on the second Tuesday in January every odd-numbered year. Regular Sessions have a limited duration of 140 days. However, the Governor can call Special Sessions during other times. Special Sessions are limited to 30 days and to issues specifically designated by the Governor.

Both the House and the Senate may enact, amend, and repeal laws and resolutions, submit all constitutional amend-

ments to the voters, and approve the state budget. Each house judges the election and qualification of its members, elects its own officers (with the exception of the Lt. Governor in the Senate), and sets and enforces its own rules. These rules govern the organization, procedures, and membership for both the House and Senate and originate in the State Constitution, the statutes, and the standing rules of the House and Senate. The rules may be suspended by the majority in each house. Both houses are required to have a two-third's majority to conduct business.

The Speaker of the House is the presiding officer of the House of Representatives. The Lieutenant Governor is the presiding officer of the Senate. Unlike the Speaker of the House, who is elected by the Representatives, the Lieutenant Governor is elected in a statewide election. The Lieutenant Governor is the second highest elected official in Texas.

Bills

A bill must be approved by both the House and Senate before it is sent to the Governor for final approval or veto. A Representative must submit a bill electronically to the chief clerk of the House, who then numbers each document sequentially according to the order received. A Senator must submit the required number of copies to the Secretary of the Senate, who then numbers each document sequentially according to the order it was received. For both the House and the Senate, the number of bills that can be introduced during the first 60 days is unrestricted. Except for local bills or bills relating to matters declared an emergency by the Governor, the introduction of a bill after the 60 day deadline requires the approval of four-fifths of the chamber members present.

Committees

Because of the volume of work and the time limits of Sessions, both chambers work from a committee system to ensure thoughtful consideration of proposed bills. **Bills cannot be considered on the**

floor prior to a committee report on the bill. Therefore, the passage of a bill hinges on the committee decision.

All committee action and voting must take place in meetings open to the public. Although a committee is not required to solicit public testimony, public testimony is almost always solicited on bills of outstanding importance, allowing citizens the opportunity to present arguments on different sides of an issue. In the Senate, a public hearing must be held on a bill before it can be reported from committee. Committees can decide to make a report on a bill or take no action. The report consists of the committee's recommendations, the committee's vote, a detailed analysis of the bill, a fiscal statement, and other necessary attachments.

On the Floor

According to the Texas Constitution, a bill must be read three times in the presence of each chamber before it can be passed. Action on a bill does not occur until the second reading of the bill. The first reading of the bill occurs when the bill is read in the presence of each chamber and referred to a committee. At the second reading, the caption of the bill is read again and subject to debate by the entire chamber. At this time, the bill can be amended by a simple majority vote. The final step in the second reading is a vote for engrossment, if the bill is in the originating chamber, or passage to third reading, if the bill is in the opposite chamber. The bill is then presented at the third reading. Amendments to the bill at the third reading require a two-thirds majority vote.

While the Texas Constitution requires three readings on three days for every bill, a bill can be given an immediate third reading following the vote for engrossment or third reading by a four-fifths majority vote. While the Senate typically uses this, the House rarely uses this exception.

If a bill is passed after the third reading by a simple majority vote, the bill is certified for final passage. The bill is engrossed, if in the originating chamber, and sent to the opposite chamber. After the bill has passed three readings in the opposite chamber, it is returned to the original

Continued on next page...

chamber. If there are no amendments to the bill, it is enrolled. Both the Speaker and the Lieutenant Governor sign the bill and it is sent to the Governor. If the bill is returned to the originating chamber with amendments, that chamber must agree to all of the amendments before it can be enrolled. If it does not agree to all of the amendments, then a Conference Committee is created to work out the differences in the two versions of the bill.

The Conference Committee is made up of five members from each chamber. After the committee meets and agrees to changes, a report is made and given to both houses for approval or disapproval. The report cannot be amended, but must be accepted in its entirety. If either chamber finds the report unacceptable, the bill can be returned to the Conference Committee for further debate, or a second committee team may be created in its place. If the report of the Conference Committee is accepted by both chambers, then the bill is

enrolled, signed by the presiding officers, and sent to the Governor. If the Conference Committee does not reach agreement or if both chambers do not agree on the conference report, the bill is dead.

Into Law

The Governor has 10 days to sign, veto, or pass the bill without signature. If the bill is vetoed while still in session, the bill is returned to the originating chamber with the Governor's reasons attached. That chamber can override the Governor's veto with a two-thirds majority vote in each chamber. If the Governor neither signs the bill nor vetoes it within 10 days of the Session end, the Governor has 20 days after the last day of Session to act.

The Process in Action

In 2011, the House passed a consolidated insurance program bill and sent it to the Senate. In the Senate, when the bill came to the Senate floor

for consideration, the bill was amended with indemnification language, passed by that chamber, and sent back to the House for that chamber's consideration of the House bill as amended in the Senate. The House did not agree to the indemnification amendments added to the bill in Senate. The bill was then sent to a Conference Committee, where differences in the House and Senate versions were worked out. In the end, both the House and Senate accepted the Conference Committee report on the amended bill containing the indemnification language. The bill was then enrolled and sent to the Governor, who signed it into law. ★

For more information on the Legislature in Texas, please visit the Texas Legislature Online Website at www.capitol.state.tx.us

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2015 TCA★PAC Roundup & Walk on the Capitol



TCA Members Making a Difference!



TCA members from around the state gathered in Austin on the 27th and 28th of January for TCA's Walk on the Capitol and TCA PAC Roundup. After an informative lobby briefing by the TCA lobby team, TCA members made the scene at Gloria's for an evening Roundup, which provided everyone ample opportunity to network in a fun, relaxed atmosphere. Members made new connections with colleagues from all over Texas and had a chance to introduce themselves to legislators and their staffers over libations, hors d'oeuvres, and Texas construction issues. The night was full of excitement, with good food, music and even better company!



The following day TCA members met for breakfast and a Walk on the Capitol briefing. TCA participants then headed to the Capitol for an afternoon of meetings with legislators and their staff. The events of the day gave members a significant opportunity to continue discussions with their state senators and representatives concerning the TCA legislative agenda and other issues of significance to the Texas construction industry. These visits made a favorable impact about issues important to TCA members' businesses of Texas subcontractors and their suppliers!

Thank you to all of the participants who made the Walk and Roundup a great, memorable success! A special thank you to our member association executives for setting up meetings with legislators, helping organize for both events, and spreading the word about these important days for TCA members.



We are excited that 97% of participants who responded to the post-event survey believe the Walk and Roundup to be a good use of their time and will attend another TCA Walk in the future. We look forward to seeing you all at the next Walk and Roundup in January 2017!





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