



Arthur Thomas Photography

THE 2024 POST-LEGISLATIVE SESSION EDITION

TEXAS CONSTRUCTION ASSOCIATION

Working on issues of major importance to the
Texas construction industry

Winter 2024



HAPPY Anniversary

Thank you for celebrating
It was so wonderful to see everyone
come together for this special occasion
YOU are who makes TC
for subcontractors
in the Texas construction industry



Happy Anniversary!

Celebrating with us!
to see our TCA members
for the festivities!
TCA a successful voice
ors and suppliers
struction industry!



New Construction Laws

The 88th Texas Legislature adopted a handful of new laws that will impact the construction industry, most becoming effective September 1, 2023. Some apply only to residential work, others apply only to public work, but many apply to all construction in Texas. For more information, copies of the bill language can be found at www.capitol.texas.gov or on the Texas Construction Association website www.texcon.org under the Government Affairs tab.

H.B. 3485 by Rep. Keith Bell & Sen. Nathan Johnson

Amends the private and public Prompt Pay Acts to address excessive owner-directed change orders. Permits a contractor or subcontractor to refuse owner-directed additional work if: (1) the change order is unsigned; and (2) the estimate for all outstanding change orders exceeds 10% of the contract price. This new law is effective for all contracts signed after September 1, 2023.

H.B. 2518 by Rep. Keith Bell & Sen. Robert Nichols

Amends the Texas Government Code to require any lease of public land to include lease terms that: (1) require performance and payment bonds on any construction project; and (2) require notice to the public entity 90 days prior to construction. Upon receipt of a notice, the public entity may halt construction within 10 days. If the public entity receives the notice and does not halt construction, the public entity will be responsible as surety if there are no bonds in place. These new lease terms must be included in all new and renewed leases signed after September 1, 2023.

H.B. 679 by Rep. Keith Bell & Sen. Charles Schwertner

Prohibits the use of a specified workers' compensation experience modifier for public projects. Public entities may still request the experience modifier. Effective for bid requests published after September 1, 2023.

H.B. 2965 by Rep. Cody Vasut & Sen. Brandon Creighton

Amends Texas' Right to Repair statute for public works passed in 2021. Adds a "No Waiver" provision to the statute. Effective September 1, 2023.

H.B. 4123 by Rep. Ryan Guillen & Sen. Judith Zaffirini

Clarifies statutes addressing who has access to criminal history records for purposes of background checks for school construction. This change was effective immediately upon being signed by the Governor on June 13, 2023.

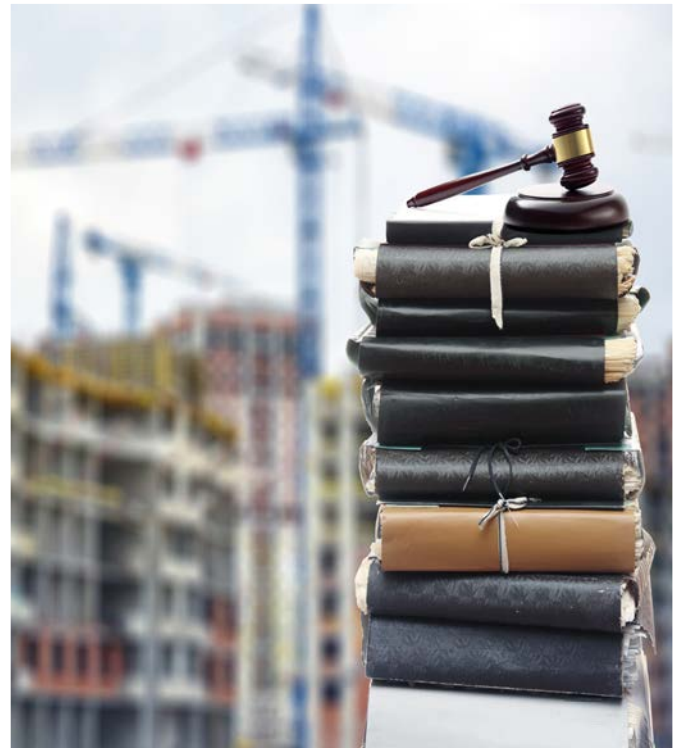
H.B. 2024 by Rep. Jeff Leach & Sen. Phil King

Reduces the Statute of Repose for residential construction from 10 years to 6 years for warranted work. This became effective on June 9, 2023.

H.B. 2022 Rep. Jeff Leach & Sen. Phil King

Amends the Texas Residential Construction Liability Act (RCLA) to limit a home builder's liability to actual home defects; to allow for up to three inspections after receipt of complaint, and increases a contractor's deadline to make an offer to repair from 45 days to 60. These changes are effective for causes of action that accrue on or after September 1, 2023.

★



Interview with Texas State Representative Jeff Leach



Texas Representative Jeff Leach proudly serves the citizens of House District 67 in the heart of Collin County. Now serving in his sixth term, Representative Leach has consistently proven himself to be a committed and effective leader in the Texas Capitol and has worked tirelessly to ensure that Texas remains strong for future generations. TCA's Bryan Hadley had the opportunity to interview Rep. Leach for our Members.

Rep. Leach, please tell us a fun fact about you that people may not know.

Most people may not know that I play golf and play the piano... and that I'm average at both. Also, I have jogged 5 miles/day every single day for the past five years... quite slowly, I might add.

What are you looking forward to in 2024 -- professionally and personally?

I'm looking forward to continued growth in every area of my life — as a husband, as a father, as an attorney and as a State Representative. I'm blessed to be raising my family in the greatest State in the greatest Nation in the history of the world. And we're working hard to make it even better, stronger and safer than it already is.

How long have you been a construction attorney? What was your best day as one and what has been your worst day?

I've been a construction attorney now going on 15 years. There are too many "best" days to pick just one. And I choose to learn from and then forget the "worst" days.

What are you working on now as a Texas House Member that is non-construction related?

Improving and strengthening the construction industry is just one of many issues that I am

passionate about and that I and my team are committed to working on in the Texas Legislature. And every session my legislative agenda reflects that. Whether it's strengthening our civil and criminal justice systems, safeguarding our fundamental freedoms and liberties, making Texas safer and more secure, making healthcare more affordable, improving our state's education system and/or strengthening our economy, you will find that my legislative agenda each session reflects my own values, but also reflects the needs, desires and demands of my constituents and all Texans, whether they are in the construction industry or not.

Have you enjoyed being Chair of the House Judiciary & Civil Jurisprudence Committee? Why?

I have been blessed and honored to serve as Chairman of the Texas House Judiciary Committee for three sessions now and I appreciate Speaker Bonnen, in 2019, and Speaker Phelan, in 2021 and 2023, for entrusting me to lead and steward the important work of our committee. We have accomplished much over the past three sessions to improve and strengthen the Texas Judicial Branch — including the challenging times during and after the COVID Pandemic, when our justice system faced unprecedented challenges. We have advanced sound measures, including many tort reform policies, that have served to make Texas the beacon for the rest of the nation when it comes to fair, open and trustworthy courts at all levels. And I'm very proud of the work that my Committee members and their teams, and so many stakeholders, have accomplished TOGETHER.

The 88th Texas

In a whirlwind five-month stretch, the 88th Regular Session of the Texas Legislature operated at full throttle. Over this period, the Texas Senate and House of Representatives combined filed a record-breaking total of more than 8,000 bills and 11,700 resolutions. However, amidst this flurry of legislative activity, only a fraction of these proposals -- 15% of the bills and 34% of the resolutions -- passed successfully at the close of the session (although some may have passed as amendments to other legislation).

In the midst of the typical bustle of legislative activity, the 2023 session will be remembered for its scandal and controversy. Most notably, the House impeached Attorney General Ken Paxton, in the wake of Paxton's request to use \$3.3 million in taxpayer funds to settle a whistleblower lawsuit brought by eight former top deputies. This marked a significant moment in Texas history -- the first impeachment of a Texas Attorney General, and only the third impeachment proceeding in the past 120+ years. The Senate subsequently satisfied its constitutional obligation and held a trial on the Articles of Impeachment in September, voting down each of the Articles brought by the House whereby returning Attorney General Ken Paxton to his post.

Additionally, during the regular session, Rep. Bryan Slaton was expelled from the House after the House General Investigating Committee conducted an internal investigation into allegations of sexual misconduct with a staff member. This incident makes him the first Representative to be expelled from the Texas House since 1927.

Leadership Priorities

At the outset of the legislative session, Gov. Abbott outlined his priority areas, including promotion of school vouchers,



property tax relief, lifting COVID-19 restrictions, school safety, border security, and curbing Fentanyl smuggling. However, by the conclusion of the session, three key goals -- the new border patrol force, property tax relief, and a public school voucher program -- were left unresolved. Despite this, the Legislature passed significant legislation like power grid reinforcement and a new corporate tax incentive program. Twenty-two of Lt. Gov. Patrick's thirty priority bills passed, including a teacher retirement bump, ending gender modification procedures for minors, and law enforcement reforms. House Speaker Dade Phelan's priorities included H.B.12, extending Medicaid eligibility for new mothers to a full year, S.B.379 exempting feminine hygiene products and diapers from state sales taxes, H.B.4 limiting how companies collect and monetize private data and H.B.18, reducing the risks to children from social media, were all signed by the Governor.

The Unprecedented Budget

Before the session commenced, Comptroller Hegar released the annual Biennial Revenue Estimate, predicting a record revenue of \$188 billion for general-purpose spending in 2024-25. This represented a staggering 26% increase from the 2022-23 budget, a testament to the post-COVID-19 economic recovery, surging energy prices, and high inflation.

House Bill 1, also known as the Texas General Appropriations Act for 2024-25, is an historic \$321 billion budget for the state's operations over the next two years beginning September 1, 2023. Nearly \$18 billion was appropriated for property tax relief, \$9 billion for public schools, \$9 billion for mental health services, \$5 billion for border security, \$1.5 billion for broadband expansion, \$1.4 billion for school safety, and \$1 billion for financing new water projects.

Senate Bill 30, the supplemental spending plan, added more money to the current fiscal year ending August 31, 2023, allocating \$13 billion towards higher education endowments, school safety grants, state employee salary increases, enhanced teacher retirement benefits, and mental health hospitals. Specific areas of funding included \$2.3 billion for expanding inpatient mental health capacity, \$1 billion for water infrastructure and supply projects, \$1.4 billion for new semiconductor investment, \$1 billion for school safety grants, and \$2.5 billion towards the Medicaid shortfall.

School Safety

Lawmakers passed H.B.3, a comprehensive school safety measure inspired by the tragic events in Uvalde. The bill mandates an armed security officer at every school and mental

s Legislature

health training for certain district employees. It creates a safety and security department within the Texas Education Agency, compelling districts to implement and adhere to robust active-shooter protocols. Those not meeting the agency's standards may face state supervision.

Increasing Texas Grid Resiliency

Senate Bill 2627, or the "Powering Texas Forward Act," was signed by Gov. Abbott and the associated constitutional amendment was approved by voters in November. The Act establishes a state-funded, low-interest loan program for companies wishing to construct gas-fueled power plants. It offers bonuses for plants completed and connected to the state's primary electric grid by 2029.

Water Infrastructure

The passage of S.B.28 and S.J.R. 75 marks significant strides towards improving Texas' aging water infrastructure. These items allocate \$1 billion for new water projects and infrastructure upgrades. The final decision to create and implement the Texas Water Fund was approved by voters in the November election. The new "Water Supply For Texas Fund" will commence on September 1, 2024.

Economic Development

House Bill 5, the "Texas Jobs, Energy, Technology and Innovation Act," replaces the previous Texas Economic Development Act, also known as "Chapter 313". The new Act halves the previous 10-year school property tax discount for large businesses moving to Texas, enhances public involvement, increases job and salary prerequisites, and strengthens oversight and accountability measures. However, it excludes wind, solar, and battery power storage projects and eliminates the controversial component of direct payments by companies to participating schools.

Data Privacy

House Bill 4, known as the "Data Privacy and Protection Act," targets companies that profit from Texans' personal information. It empowers Texans with new data privacy rights, including the ability for parents to safeguard their children's data. Additionally, H.B.18, the "Securing Children Online through Parental Empowerment" or SCOPE Act," provides parents with several tools to exert more control over how their children's data is shared. This includes awareness of the type of data being collected and the authority to erase it. These legislative proposals fortify the digital safety of Texans and their families.

What Didn't Pass?

School choice emerged as a key issue, but the two chambers failed to reach consensus on the implementation of a school voucher program, leading to the downfall of S.B.8 and H.B.100 -- both designed to increase school funding and education savings accounts. Attempts to strike a compromise on property tax relief was also met with significant opposition as S.B.3 also died.

This disagreement among both chambers and parliamentary procedures extended to the demise of other high-profile bills such as H.B.7, which bolstered border security funding and controversially created a border safety unit; H.B.2744, which raised the age limit to purchase semi-automatic weapons from 18 to 21; H.J.R.102 for legalizing online sports betting; H.J.R.155 for casino authorization; H.B.1422 for permanent daylight saving time adoption; S.B.23 and H.B.4843 for increasing minimum sentences for gun crimes; and S.B.147 designed to curb foreign land ownership.

Conclusion to the Regular Session

The 88th Legislature saw its share of tension and disagreements, with the two legislative chambers often at odds, especially on issues of property taxes and school choice. Many bills died due to legislative deadlines and friction between the chambers. Also as usual, the budget played a key role, with the historic surplus affording lawmakers the ability to make substantial investments across various segments of state government.

Although the legislative session officially adjourned "Sine Die" on May 29th, Gov. Abbott swiftly called a special session to begin that evening at 9pm, with an agenda encompassing property taxes and border security; hinting at the possibility of several more in the future of which there have been four as of the date of publishing.

Special Sessions 1 and 2

As of the date of publication, the 88th Texas Legislature has been called back into session by the Governor four times. The focus of the first and second special sessions was property tax relief. The second special session concluded with the passage of the following measures which were signed by the Governor on July 22nd and, where necessary, approved by the voters in November.

Property Tax Reform

This legislation compresses the maximum school property tax rate by 10.7 cents per \$100,000 valuation and replaces local funding with state dollars. It increases residential homestead

Continued on page 19...



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 bills 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 TCA doesn't have a well-funded PAC, it's at a disadvantage because it is guaranteed that TCA's opponents do.

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



Worker Training Grant Programs

The Texas Workforce Commission (TWC) has a diverse portfolio of programs and services to support the workforce needs of current and prospective Texas businesses. For more information contact the TWC at skills@twc.texas.gov

Skills Development Fund

A Texas public community college, technical college, local Workforce Development Board, or the Texas A&M Engineering Extension Service can apply for the grant in partnership with a business, business consortium, or trade union. Program parameters include: up to \$500,000 per business (more for a consortium) for customized training needed by the business; target average cost per trainee of \$2,000; and training for full-time employees.



Skills for Small Business

A small business with fewer than 100 employees can apply for a Skills for Small Business Grant. Program parameters include: up to \$1,800 per new hire and up to \$900 per incumbent worker for tuition and fees in a 12-month period; training for full-time employees; and training selected from courses offered by a Texas public community or technical college or the Texas A&M Engineering Extension Service.

Texas Industry Partnership

The Texas Industry Partnership (TIP) program targets skills gaps and ensures a talent pipeline is available to address regional industry needs. Private employers, corporate foundations, and most 501(c)(6) organizations can collaborate with local Workforce Development Boards to apply for funding to support workforce development projects focused on high-demand, target occupations for job training in their communities. The TIP program supports collaborations between Boards and industry partners by leveraging matching contributions of up to \$150,000 for workforce-related activities including occupational job training.

Texas Workforce Solutions

TWC partners with the 28 Workforce Development Boards located statewide to further assist businesses with solutions to their workforce needs, including assistance in obtaining tax credits and labor market information. These valuable services can significantly reduce the cost of recruiting, retaining, and training employees. ★



Governor Signs Ban on COVID Vaccine Requirements

On November 10, 2023, Governor Greg Abbott signed S.B. 7, a new law prohibiting any Texas employer from requiring COVID-19 vaccines. The new prohibition becomes effective February 6, 2024.

More specifically, Texas law will prohibit a private employer from mandating COVID-19 vaccines for their employees, applicants and independent contractors. Additionally, employers may not take an adverse action against an employee, applicant or independent contractor if the person chooses not to be vaccinated. An adverse action is defined as any action a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting the employee.

Complaints will be handled by the Texas Workforce Commission. The law states that the Commission SHALL impose a fine of \$50,000 for each violation UNLESS: (1) the employer hires the applicant or contractor; OR (2) reinstates the employee or contractor. Regardless of the above, the Commission may seek to recover from the employer reasonable investigative costs.

There is an exception for health care facilities and providers. They may establish a reasonable policy that includes requiring the use of protective medical equipment by an employee or contractor who is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual's routine and direct exposure to patients. ★

The Contingent P

by Regan O'Steen, Thomas, F



*Regan O'Steen of Thomas,
Feldman & Wilshusen, LLP*

If you are a subcontractor then you have certainly seen a provision in most of your subcontracts providing that your customer's obligation to pay you is conditioned upon your customer's receipt of payment for your work from the owner. In other words, if you are a subcontractor to the prime contractor

(or a sub to a sub), your subcontract provides that the prime contractor does not have to pay you unless the owner pays the prime contractor first. That provision is called a "contingent payment clause" and in Texas, the Contingent Payment Statute (TEX. BUS. & COMM. CODE §56.001 et seq.) provides benefits and protections to subcontractors with these clauses in their contracts.

The Contingent Payment Statute (the "Statute") became effective in 2007 yet many subcontractors, prime contractors and owners are unaware of the protections offered by this complicated statute. As with most laws in Texas, the Statute is a compromise reflecting the diverse segments of the construction industry, each fighting to protect their interests. It does not ban contingent payment clauses outright, but it does make them unenforceable in some instances and provides contractors with tools that can be used to limit their effect. ²

WHEN ARE CONTINGENT PAYMENT CLAUSES UNENFORCEABLE?

Defective or Noncompliant Work

If the owner's non-payment is due to the prime contractor's failure to meet its contractual obligations, the contingent payment clause in your subcontract is unenforceable. However, if the prime contractor's failure to meet its contractual obligations is due in whole or in part to your failure to meet your

subcontract obligations, the contingent payment clause will be enforceable.

For example, assume the owner is not paying the prime contractor because the electrical work failed inspection. Based on the contingent payment clause in their subcontracts, the prime contractor is not paying the electrical sub that installed the failed electrical work, and the concrete sub who is not responsible for the electrical work. The Statute will help the concrete sub, but will not help the electrical sub since the owner's failure to pay is due to the electrical sub's failure to meet its contractual obligations.

If you have not received any notice of deficiencies in your work but also have not received payment, try to determine the reason the prime contractor is not paying you, preferably in writing. If they tell you the owner isn't paying them, one option is to send a written notice notifying the prime contractor that it can't rely on the contingent payment clause to not pay you as your work is not the reason for the owner's non-payment and cite the Statute.

...in Texas, the Contingent Payment Statute...provides benefits and protections to subcontractors with

When the Owner and Prime Contractor are the Same

The contingent payment clause in your subcontract will not be enforceable if the owner can effectively control the prime contractor, or the prime contractor can control the owner, through common directors, officers, owners or otherwise.

For instance, it is not unusual for an owner to be a developer that has a construction division that handles the construction on a purchased property. If the construction division subcontracts the work and



Payment Statute¹

, Feldman & Wilshusen, LLP

includes a contingent payment clause in its subcontracts, then the contingent payment clause will likely be unenforceable because the owner and prime contractor are in actuality the same entity. If you have not been paid, and you believe there is a link between the owner and prime contractor, it is certainly worth consulting your attorney to see if the Statute can provide relief.

Enforcement of the Clause is “Unconscionable”

A contingent payment clause may be unenforceable if a judge, jury or arbitrator determines that enforcement of the clause is “Unconscionable.” Unfortunately, it’s not as easy as consulting statutory language to determine what is unconscionable. The Statute does not explain when enforcement would be “unconscionable” but instead explains when it is NOT unconscionable.

The Statute provides it is NOT “Unconscionable” to enforce a contingent payment clause if the prime contractor provides you with certain specified financial information regarding the owner’s ability to pay for the construction.³ This specified information must be provided to you before your subcontract becomes enforceable (by signing or otherwise).

In addition to providing information, to be NOT unconscionable, the prime contractor must either: (1) make reasonable efforts to collect the amount owed to you; OR (2) offer to assign to you the prime contractor’s right to sue the owner for collection. The assignment must not be subject to any defenses caused by the prime contractor’s acts or omissions.

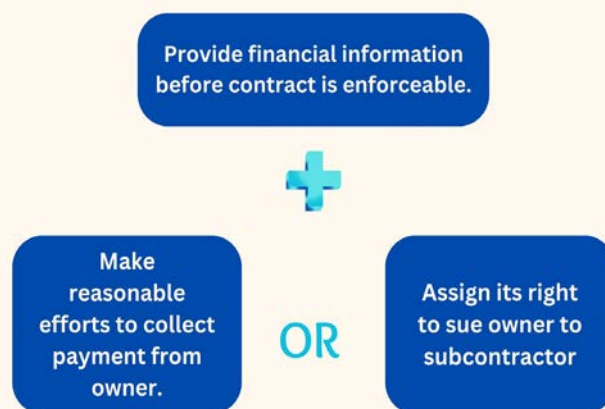
If the prime contractor provided the specified documents AND either made reasonable efforts to collect your payment, OR assigned its rights to collection to you, then the contingent payment clause in your subcontract IS enforceable. If one of those two things does not occur, presumably the contingent payment clause in your subcontract would NOT be enforceable because it would be “unconscionable” to enforce it.

For example, if the prime contractor didn’t provide the specified financial information, but did make

reasonable efforts to collect the amount owed to you, the prime contractor could not rely on the contingent payment language in your subcontract to not pay you. You would still have the right to seek payment from the prime contractor and the prime contractor could not rely on the owner’s non-payment as a defense.

It is important to know that the subcontractor is not required to request the financial information regarding

TO ENFORCE CONTINGENT PAYMENT CLAUSE PRIME CONTRACTOR MUST



the owner’s financial ability. The prime contractor, on its own initiative, must provide the information before the subcontract is enforceable. Nevertheless, you should still try to strike out any clauses in your contract providing that you have received the statutorily required information regarding the owner’s financial ability, or clauses that attempt to shift the burden to you to actually request such information, because the law is unclear as to whether these risk shifting attempts will be upheld under the Statute.

You should also be aware that if the prime contractor requests the specified financial information from the owner, but the owner actually fails or refuses to provide the information to the prime contractor within 30 days of such request, then the prime contractor and all of the subs/suppliers are relieved of the obligation to start work or to continue performance

Continued on page 18...



TEXAS CONSTRUCTION ASSOCIATION

BENEFITS OF MEMBERSHIP



TCA'S WORKERS' COMPENSATION PROGRAM

Texas Mutual Insurance Co. provides premium discounts for lower workers compensation insurance costs through its group purchasing power and Safety Groups. The program was developed to benefit companies in all construction trades. In addition to participants being eligible for Texas Mutual Insurance Co.'s regular dividend, they are also eligible for the additional TCA group dividend and enhanced premium discount for upfront savings.



OFFICE DEPOT BUSINESS SOLUTIONS/OFFICE DEPOT DISCOUNTS

Offered through TCA's member benefit program, TCA has partnered with ODP Business Solutions and Excelerate America to provide our members with discounts on almost all products. TCA members receive 10-30% off the top 100 business items purchased most and up to 55% off additional business products. In addition to product discounts, our members save up to 40% on black and white copies, 25% on color copies and 40% on finishing services.



TCA RETIREMENT COLLECTIVE 401(K)

A multiple employer 401(k) Plan exclusively designed for TCA Member Companies to provide 401(k) Plans to their employees, our multiple employer plan functions as a company's 401(k) support team so a company's staff doesn't need to act as 401(k) experts. The TCA Retirement Collective eases plan administration, is customizable, reduces employer fiduciary liability by 95%, is fully compliant, has low fees due to volume pricing and is serviced by our experienced national providers: The Retirement Advantage, Raymond James Financial Services, and Ameritas Retirement Plans.



TOTAL WORKPLACE SAFETY (TWS).

The Texas Construction Association (TCA) wants all their members to work in the safest, most efficient possible manner. That is why TCA has partnered with TW Safety (TWS). TWS offers services including First Aid Kit Supplies and Refill Service, AED Defibrillator Sales and Maintenance Service and Safety Database Management.



TCA RAPID! PAYCARD

This benefit provides a member company with one of the most comprehensive PayCard benefits and ePayroll programs designed for employers choosing to convert to electronic delivery of payroll at zero cost. The PayCard is free to TCA members.



TCA WEX FUEL CARD

This card gives members the necessary tool to help reduce costly waste and save up to 15% on fuel management costs. WEX's fuel card program offers security by helping to protect against unauthorized spending and gives your drivers the convenience of being able to fill up just about anytime and anywhere. ExxonMobil & Leasing Associates have teamed up to provide TCA members with a new and improved fuel card. The ExxonMobil fuel card powered by WEX delivers significant savings and greater control over the costs associated with fueling fleet vehicles. Start saving 5¢ on every gallon!



MINDFORGE

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 hands. With efficient knowledge sharing across all crews, you will save time, increase your work quality, and empower your workforce to stay safe. TCA members receive a 20% discount.



TCA RESOURCE CENTER

The TCA Resource Center on the TCA website contains a wealth of information for members with glossaries of construction industry resources and construction industry associations. In addition, the Resource Center provides members a construction contract clause library with an extensive list of contentious clauses commonly found in construction contracts. Explanations and examples are given to help members apply the information to their own specific situations. The Resource Center also contains statutory lien waiver and lien notice forms.



NAYLOR ASSOCIATION SOLUTIONS

In collaboration with the Texas Construction Association, Naylor Association Solutions established an exclusive career center for the association's members and industry. Employers can confidently list their job openings, ensuring heightened visibility amid the clutter of conventional job boards. Simultaneously,, job seekers gain access to a tailored job board featuring Texas-based opportunities aligned with their skills and interests.



Do You Provide a 401k Plan to Your Employees?

A TCA MEMBER BENEFIT!

CUSTOMIZED PLANS

The goal of the TCA Retirement Collective is to provide customized 401(k) Plans with lower fees, while reducing Employer administrative & Fiduciary responsibilities. The TCA Retirement Collective reduces Members' 401(k) Plan Fiduciary liability by 95%!

ISSUE RESOLUTION

The TCA Retirement Collective is built around the 5 issues Employers want resolved in their 401(k) Plans:

- *Ease of Administration*
- *Protection from Fiduciary Liability*
- *Compliant*
- *Pay Reasonable Costs*
- *Serviced by experienced National Providers*

IN ADDITION

For members with 100+ employees, the TCA Retirement Collective has an agreement with a National CPA firm, to provide annual Plan audits at a deeply discounted rate.

CONTACT

Texas Construction Association
Patrick Finnegan - Vice President of Operations

E: pfinnegan@texcon.org

P: 512-473-3773

THE TCA RETIREMENT COLLECTIVE

We're excited to announce the TCA Retirement Collective, which is a group 401(k) Plan program, known as a Multiple Employer Program. It's exclusively designed for TCA members to provide 401(k) Plans to their employees.



The TCA Retirement Collective functions as your Company's 401(k) Plan support team so you & your staff do not have to act as 401(k) Plan experts.



The TCA Retirement Collective provides lower Plan fees because it's a 401(k) Plan "cooperative" with many Adopting Employers. The TCA Retirement Collective provides volume pricing & passes those lower fees to each Member that becomes an Adopting Employer & their employees. Each TCA Member has a customized 401(k) Plan design that's based on each Member's unique needs & goals.



PROVIDES A THREE-LAYER FIDUCIARY "PROTECTIVE SHIELD" FOR EACH ADOPTING EMPLOYER

The TCA Retirement Collective provides a three-layer Fiduciary "protective shield" for each Adopting Employer by including the services of:

- The Retirement Advantage as the ERISA 3(16) Administrative Fiduciary & Administrator
- Raymond James Financial as the ERISA 3(38) Investment Fiduciary
- Ameritas Retirement Plans as the recordkeeper & investment provider



Meet the Texas Construction Safety Group Team!



Pictured above, left to right: Gina O'Hara TCSG Program Manager; Patrick Finnegan, VP of Operations at TCA; Cassie Doolittle, TCSG Team ANCO Agent

Texas Construction Safety Group provides over 1900 TCA members with lower Workers' Comp premiums, additional dividends, and excellent tools, resources, and innovative safety training to help keep workers safe.

Gina O'Hara, Program Administrator for the safety group, and her daughter Cassie Doolittle, ANCO Insurance Agent, work diligently to co-manage the Texas Construction Safety Group bringing together the

most comprehensive benefit TCA offers its members. Learn more about the mother/daughter duo below!

Gina O'Hara began her career in 1977 and over the next forty years she worked her way up from the mailroom of an insurance agency to creating and managing the largest Workers' Compensation Safety Group in Texas. In 2001, she saw an opportunity to bring the buying power of a group to the members of the Texas Construction Association. The relationships with Texas Mutual and TCA and the mutual benefits to all who take part in the Safety Group are among her career highlights. When she's not working, she can be found in her garden or hiking at nearby McKinney Roughs park. She enjoys spending time with her husband Bill, 5 kids, 5 grandkids and her one very, very, smart dog, Ginger.

Cassie Doolittle came home from school in 1st grade with a writing assignment where she had written "When I grow up, I want to be a insherinchant agot because My Mom is". That early pronouncement came to pass in 2015 when she joined her mom at ANCO Insurance as a commercial producer and co-manager of the Texas Construction Safety Group. She is the proud mom of two teenage girls and two needy mutts from the streets. She enjoys spending time with her many friends as well as running in State Parks, practicing hot yoga and halfway completing lots of craft projects. ★

Leasing Associates / Exxon Mobil Fleet / TCA Fuel Card Member Benefit



Our award winning customer service is available to help you 24/7



Put yourself in the driver's seat with our purchase controls that allow you to track spending exceptions and address problems quickly



The card is also accepted at 95% of retail fueling locations in the U.S.

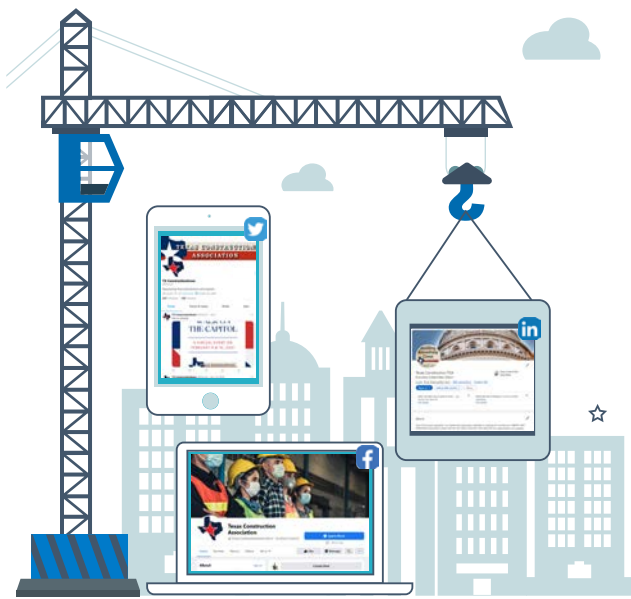


Contact Texas Construction Association today!

Patrick Finnegan
512-473-3773
pfinnegan@texcon.org



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



X (twitter.com)

@Texconassn



LinkedIn

Texas Construction (TexconAssn) Assn



Instagram

@texconassn



Spotlight on Executive Director

Eddie McCormick

Drywall & Accoustical Contractors

Association Dallas Fort Worth &

Texas Lathing & Plastering Contracotrs Association



Eddie has been the Executive Director for DACA DFW since 2009 and also serves as the Executive Director for TLPCA. Independent of the original 35-year-old DACA DFW Association, DACA has since started chapters in Austin and Houston!

Eddie began his drywall construction experience with Marek Dallas in 1992 as a helper in the field and stepped up through the ranks, finally becoming an estimator/project manager. Eddie says, "Marek gave me the insight, education and opportunity to grow in the industry then welcomed my move to the association world in 2009!" Having met numerous GC's, developers, architects, and code officials during his seventeen years of contractor experience with Marek, this network currently helps his role as Director of five associations!

Eddie has served as a Planning & Zoning Commissioner for three terms in The Colony, and he serves on the Executive Board for the North Texas Code Officials Association. He enjoys sharing his industry knowledge to help members. He often visits jobsites where DACA & TLPCA members work, visits with them, listens about how the industry has changed since he wore a tool belt 31 years ago, and teaches CPR/First Aid classes.

Eddie attests, "Our industry is one that affords the opportunity to achieve what you are willing to put in the work for!"





Gina O'Hara
*Program Administrator for
Texas Construction Safety Group*

Since 2005, TCA has endorsed the Texas Construction Safety Group, a workers' compensation program through Texas Mutual Insurance, the largest workers compensation insurance carrier in Texas. Are you already insured by Texas Mutual? Be sure to confirm you are part of the Group.

For many businesses, safety group programs provide the most cost-effective and advantageous workers' comp insurance options. With the Texas Construction Safety Group you'll get lower premiums and excellent tools and resources to help keep your workers safe. Plus, being covered by Texas Mutual Insurance Company means you have award-winning service, cost saving claims handling and innovative safety training. There is also a proven history of both individual and group dividend payouts.

The Texas Construction Safety Group continues to have phenomenal success in growth dividends and loss ratios. As of December 31, 2023, we have reached a group premium of approximately \$77 million with over 1,900 policy holders. It is the largest workers' compensation safety group for construction companies in Texas. Since 2005, the Group has earned \$57.2 million in dividends. The Group's safety efforts made a significant impact in 2023, resulting in a dividend distribution from Texas Mutual of \$6.4 million.

TCA member companies receiving group dividends (in addition to the individual company dividends from Texas Mutual) were those who are insured with Texas Mutual in the Texas Construction Safety Group. And there is another plus: part of the Texas Mutual's company dividend calculation typically includes a retention factor that rewards a company for longevity with Texas Mutual. Dividends are not guaranteed,

but Texas Mutual has a proven track record of never missing a year in paying one.

Joining the Group is simple. Just ask your agent to request a quote in the group from Texas Mutual. Additional information can be found at www.txconstructionwc.com or by calling the program administrator, Gina O'Hara at (512) 415-6480 or emailing info@txconstructionwc.com. ★

TEXAS CONSTRUCTION SAFETY GROUP
BETTER TOGETHER

PREMIUM DISCOUNT
TWO DIVIDEND OPPORTUNITIES
VALUABLE SAFETY RESOURCES

Texas Mutual
WORKERS' COMP INSURANCE
Dividends are based on performance and are not guaranteed.

Rep. Leach Interview *Continued from page 5...*

What do you think are the best two or three pieces of Texas legislation passed for the Texas construction industry?

I feel like we've accomplished so much in the last few sessions. There's still a ways to go, but it's hard to pick a favorite. I would say the "design defect" issue from 2021 would be a huge one. It was a collaborative effort across all areas of the construction industry. I think by the time we got to a final bill, it was a comprehensive piece of legislation that streamlined and corrected a lot of issues in the industry, for general contractors, for subcontractors, everyone, by providing much needed clarity for who is responsible for defects in design. Every facet knows, with certainty, what they are or are not responsible for. That along with legislation ensuring the "right to repair" when a defect is discovered, provided, what I feel, are incredible wins for the entire industry. Another big one would be the lien law updates my friend and deskmate, Chairman Burrows, passed in 2021. After years of dispute and disagreement, the legislature was finally able to pass legislation to modernize, update and clarify lien laws for all parties; another huge win for the industry on the whole.

What is the single biggest detriment or hurdle that faces Texas subcontractors today that needs to be changed legislatively?

I, of course, rely on the valued feedback and input of construction industry leaders – like you – to tell me what issues are most important to you and, if there are legislative solutions, to work collaboratively with me to try to solve them. Working together, we've had some great wins for the industry in recent years, but there is absolutely still work to be done. I think some of the major issues I look forward to continuing to work on are the issue of securing retainage/reserved funds to make sure they are appropriately allocated; and



the issue of how we incorporate documents into construction contracts all parties need to have timely and clear access to any documents incorporated into a contract by reference if they're

a party to the contract, then they need to be aware of what all is in the contract.

Do you have a favorite facet of the construction industry (e.g. steel, glass, electrical work) that interests you personally?

Not joking — and not being "political" — I honestly am fascinated by all of the trades...working together to make a vision become a reality. This industry — the people reading this article — really is building Texas. They are some of the most talented, equipped, smartest and exceptional men and women I know and they're doing amazing work with their minds and with their hands. And it's amazing to watch.

What was your favorite vacation of all time and why?

I traveled to Israel several years ago – and while, yes, it was a "vacation"... it was more so a life-changing experience that I will forever be grateful for and will never forget.

Is there a particular lesson you learned from parents or family members which still resonates with you today?

"It's always right to do the right thing."

Do you like to hunt and/or fish? If so, what's been a highlight?

I love hunting and fishing. In addition to golf, piano and running (see above) — hunting and fishing calm me and help me stay grounded. And, frankly, help me grow my relationship with the Lord — the Creator all good things under Heaven and on Earth. My absolute favorite memory is catching my first fish with my dad as a young boy — using a hot dog as the bait. As we gutted and prepared the fish for dinner... we found the hot dog fully intact in its stomach... and we had a good laugh at the fish's expense!

Favorite sport and why?

I'm a huge Texas Rangers and Dallas Mavericks Fan... and a golf fanatic as well. But my dad taught me three lessons growing up that have always stuck with me...

1. Love Jesus.
2. Love my Mom.
3. Hate the Philadelphia Eagles!

So, without question, football is my favorite sport. And the Cowboys are my team, through thick and thin. ★



on the project. However, presumably this right would be waived if you started work on the project.

NOTICE OBJECTING TO FUTURE ENFORCEABILITY OF THE CLAUSE

The Statute can also be used offensively. It was drafted to work in tandem with the Public and Private Prompt Pay Acts.⁴ Under the Statute, if you have not been paid 46 days after submitting a proper/timely request for payment, you may send the prime contractor a notice objecting to the “further enforceability” of the contingent payment clause for work performed or materials delivered after the prime contractor receives your notice of objection.

The notice will become effective on **the later of**: ten days after the prime contractor receives your notice of objection, or eight days after interest begins to accrue under the applicable prompt pay acts on **private** or **federally** owned projects, or 11 days after interest begins to accrue under the applicable prompt pay act against the owner on **state** public projects.

For example, on a privately owned project, under the Private Prompt Pay Act, interest begins to accrue against the owner on the 36th day after the general contractor submits its pay request. If proper notice is provided, the contingent payment clause becomes unenforceable for future work beginning on the 44th day after the owner receives the general contractor’s pay request, or 11 days after the general contractor receives the subcontractor’s notice, whichever is later.

This can be a powerful tool for subcontractors, but note, it only protects you for work AFTER you have sent the notice and the applicable time periods have passed. Additionally, the notice will be ineffective if the owner

has a good faith dispute over the amount owed to the prime contractor for your unpaid, labor, materials, services and/or equipment. The prime contractor must notify you of the owner’s good faith dispute five days before the notice becomes effective, or five days after the prime contractor receives your notice, whichever is later. Thus, in reality, the ability to send the notice objecting to future enforceability is only helpful during construction that will last more than a few months. But for lengthy projects, this notice can be a helpful tool.

CONCLUSION

Although the Contingent Payment Statute can be difficult to understand, and the process is somewhat complicated, it can provide a subcontractor with some significant relief during construction if used properly. Further, the benefits of the statute cannot be waived by contract. And the Statute states affirmatively that the existence of a contingent payment clause in your subcontract does not affect your lien rights under Chapter 53 of the Texas Property Code. Finally, keep in mind that the Statute does not only apply to contingent payment clauses in the prime contractor’s subcontracts. The Statute also applies to any contingent payment clauses in downstream subcontracts as well.

¹This article is intended to be a broad general explanation to construction industry personnel of the concepts



in the Contingent Payment Statute. No attempt has been made to discuss all aspects and corresponding legal issues presented by the Statute. Due to its general nature, this article

Continued on next page ...

The 88th Texas Legislature *Continued from page 7...*

exemptions from \$40,000 to \$100,000 and caps increases to appraised value of existing non-residence homestead property at 20% over the preceding year. The cap applies to property valued at \$5 million or less in 2024. The Comptroller will set future caps based on CPI.

Franchise Tax Reform

Special session legislation increases from \$1 million to \$2.47 million the amount of the total revenue exemption for franchise tax. The legislation also eliminates the requirement for a taxable entity that does not owe any franchise tax to file an informational report with the Comptroller.

Special Sessions 3 and 4

The Governor called the third special session to convene on October 9th. The subject matters on the call included public school vouchers, immigration reform, border security and a prohibition on COVID-19 vaccines. At the conclusion of the 30-day session, the House and the Senate sent only one bill to the Governor's desk – S.B.7 -- which prohibits private employers from requiring COVID-19 vaccinations as a condition of employment. However, some strides had been made on the other issues, so the Governor called the fourth special session to begin within 24 hours after the conclusion of the third.

The Governor's call for the fourth special session addressed border security and school choice/vouchers. The Senate quickly passed S.B.1 (school choice/vouchers); S.B.2 (school funding); S.B.3 (border security); S.B.4 (illegal entry); and



S.B.5 (school safety funding). The House approved both S.B.3 and S.B.4, sending them to the Governor's desk, but took a few more days to get its school bill out of the Select Educational Opportunity & Enrichment Committee. On November 17th, H.B.1, the House's omnibus education bill addressing school choice/vouchers, school funding and school safety funding, hit the floor of the House. After heated debate centered around opposition to school choice/vouchers, H.B.1 was voted down 84-63. This essentially put an end to the fourth special session which formally concluded on December 5th. As of the date of publication, the Governor has not called a fifth special session for the 88th Legislature. ★

Contingent Payment Statute *Continued from page 18...*

should not be used as legal advice or a legal opinion in specific situations. This discussion is too general to be applied in any specific situation. For information about the applicability of the Statute in specific circumstances, one should seek the advice of an attorney.

² It should be noted that the Statute does not apply to contracts that are solely for design services. TEX. BUS. & COMM. CODE §56.002(1). Further, it does not apply to a contract that is solely for the "construction or maintenance of a road, highway, steel bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction." TEX. BUS. & COMM. CODE §56.002(2). It also does not apply to a contract for

construction of a structure that is a detached, single-family residence, duplex, triplex or quadruplex. TEX. BUS. & COMM. CODE §56.002(3).

³ TEX. BUS. & COMM. CODE § 56.054 (d) provides a laundry list of information to be provided by the prime contractor.

⁴ TEX. PROP. CODE Ch. 28; TEX. GOV'T CODE Ch. 2251. ★





Texas Construction Association Board of Directors

OFFICERS

David Stone - Chair
Fire Sprinkler Contractors
Association of Texas

Chris Lambert - Vice Chair
Central Texas Subcontractors Association

Andy Adams - Secretary
American Subcontractors Association
Houston Chapter

Carmen Autry - Treasurer
American Subcontractors Association
North Texas Chapter

Raymond Risk - President / CEO
Texas Construction Association

DIRECTORS

Kyle Kelly
American Subcontractors Association
Texas Chapters

Kevin Camarata
Texas Masonry Council

Keith Colvin
Texas Iron Workers
Employers Association

Brian Shahan
Painting & Decorating
Contractors - DFW Council

Monty Oehrlein
Precast Concrete Manufacturer's
Association of Texas

Doug Gregory
Mechanical Contractors
Association of Texas

Paul Holden
Subcontractors Association
of the Metroplex

Tye Eldridge
National Electrical
Contractors Association
Texas Chapters

Robbie Ketch
DFW Drywall & Acoustical
Contractors Association

Ronnie Gonzales
Southwest Terrazzo Association

Kelley Bitner
Texas Structural Steel Institute

Francisco Franco
Texas Lathing & Plastering
Contractors Association

Denise Baker
Texas Glass Association

Allan Woodruff
Texas Crane Owners Association

LEGAL COUNSEL

Fred Wilshusen
Thomas, Feldman, & Wilshusen LLP