

THE 2023 PRE-LEGISLATIVE SESSION EDITION

# TEXAS CONSTRUCTION ASSOCIATION

Working on issues of major importance to the  
Texas construction industry

Winter 2022



## Message from the President

Are you a TCA member who shared in the \$6.8 million distributed by Texas Mutual Insurance Company to the Texas Construction Safety Group in 2022 for its workers' compensation performance? If not, call your insurance agent to see if your company qualifies to be a member of the safety group. Check out Gina's Article on page 12.



In addition to the savings of TCA's Texas Mutual program, I am excited to announce a new opportunity for TCA Members. We have established the TCA Retirement Collective with a team composed of The Retirement Advantage, Raymond James Financial Services, and Ameritas to offer our members access to a Multi-Employer 401(k) program. For more information turn to page 17. And be sure to visit our website for more information about all of TCA's Member Benefits that can save money for your company. Visit the Member Benefits section of [www.texcon.org](http://www.texcon.org).

On January 10, 2023, the Texas Capitol will host the beginning of the 88th session of the Texas Legislature. This newsletter has articles prepared by TCA staff and others to give you a perspective on issues of statewide importance and those of particular importance to the construction industry. TCA will be supporting specific construction bills, bills affecting our members as employers, and other issues that may arise which are beneficial to our members. And we'll be watching for those bills that are contrary to our members' interests.

We hope to see you at our biennial Walk on the Capitol on January 31 – February 1. This is an opportunity for you to visit with your elected officials and educate them on the impact on your business of what they do in Austin. Member involvement directly with legislators can make a huge difference on the outcome of legislation. Signup forms for registration, TCAPAC, and sponsorship can be found at [www.texcon.org](http://www.texcon.org) under Upcoming Events.

See you soon!

*Raymond*

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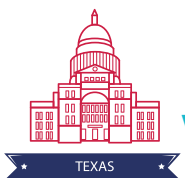
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# A Preview of the 88th Texas Legislature

The 88th Texas Legislature will be sworn in and begin its 140-day regular session on Tuesday, January 10, 2023. As with past sessions, there will be a multitude of issues vying for the attention of the state's 181 elected officials. The state budget, property tax reform, education, the power grid, and border security will most likely take center stage; however, if history repeats itself, the House and Senate will end up passing well over 1,000 bills before adjourning on May 29, 2023.

## Texas State Budget

In July, Texas Comptroller, Glenn Hegar, announced a \$26.9 billion surplus available for the upcoming 2024-25 biennium. No doubt the Legislature will need to weigh just about as many requests for the extra dollars. However, the Legislative Budget Board adopted a spending cap that allows the Legislature to spend only about half of the surplus, or \$12.5 billion. With over 1,000 people moving to Texas every day, expect to see increases in appropriations in healthcare, education and public safety to accommodate population growth and inflation. The remainder will most likely be divided up based on leadership priorities.

## Property Taxes

Both Governor Abbott and Lieutenant Governor Patrick have stated that property tax relief is their number one priority for the surplus funds. This has been a priority in past sessions and reductions have been passed on to homeowners via increases in homestead exemptions and rate freeze caps. The challenge with spending the surplus this way is the fact that Comptroller Hegar has made it very clear that a surplus as large as this one is a one-time-thing. The extra funds are due to an increase in consumer spending after COVID as well as inflationary increases. Thus, the Legislature will need to be creative to ensure that any adopted property tax relief is sustainable in the future.

## Education and School Safety

Public education, both K-12 and higher education, are still dealing with the effects of the COVID pandemic while managing the significant curriculum changes adopted by the

87th Legislature. On top of all of this is the issue of school safety brought to light by the school shooting in Uvalde last May. These issues will be high on the agenda for many legislators in 2023 with a focus on increasing mental health resources in schools and communities.

## Power Grid

The 87th Legislature passed significant legislation in response to the February 2021 winter storm mandating winterization of power plants and a redesign of the state's power market to encourage the construction of additional power resources. The Public Utility Commission and ERCOT are both under review by the Sunset Commission and several legislators have indicated that the PUC should delay adopting a planned redesign plan until after the 2023 session.

## Border Security

Governor Abbott initiated Operation Lonestar in March of 2021, deploying 10,000 Texas National Guard troops and DPS Troopers, to augment the U.S. Border Patrol and other federal agents. Unfortunately, border crossings continue to increase and with them, evidence of drug and human trafficking. No doubt border security and state funding for Operation

Lonestar will be issues in the 2023 session. This indicates an intention by the leadership to address the redesign proposals this spring.

All of the items listed above are in addition to so many other issues, large and small, including, but of course not limited to, addressing the opioid and fentanyl crisis, re-visiting emergency powers reform (to date, the state is still under the Governor's public health crisis Executive Order), increasing the criminal penalty for illegal voting, preempting local authorities, school choice and vouchers, and social issues such as gender-affirming care and other issues impacting the LGBTQ+ community. ★



# Protecting Retainage

Prior to 2022, Texas law required “retainage” of 10% of the contract price or value of the work to be held by an owner on private (non-public) projects. The 87th Legislature rebranded the name, but kept the concept. Now the term used is “reserved funds” for what was known as “required retainage”. No other changes were made to this portion of the law; just a change in terminology.

Texas Property Code Sections 51.101 and 53.102 provide: *“...the owner shall reserve 10 percent of the contract price of the work to the owner” and “[t]he reserved funds secure the payment of artisans and mechanics who perform the labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material...”*

The intention of the law is for the owner to hold back 10% from the general contractor to help assure that the subcontractors and suppliers furnishing labor and material get paid for improving the owner’s property. This statutory obligation gives a false sense of security to the construction team. Typically, the construction team has no method to monitor whether the owner has actually set aside the 10% reserve. So, just how secure are these reserved funds?



When a dispute arises involving money owed for labor or material furnished to the project, the contractor has a right to file a mechanic’s and materialman’s lien against the real property of the construction project. Even though the lien process is fraught with numerous deadlines and pitfalls, this mechanism provides fairly good security for contractors. If payment of reserved funds never comes, a contractor can sue to foreclose the lien, get a judicial order to sell the property, and the proceeds can pay the contractor.

HOWEVER, what if financial complications arise and the construction lender forecloses on its Deed of Trust lien that secured the construction loan? BAM! The contractor’s mechanic’s lien is nullified and has no effect against the property or the new owner who purchased the property at foreclosure. The construction lender’s loan trumps the construction team’s mechanic’s liens and the new owner gets the benefit of 100% of the improvements to the property for 90% of the cost or less if progress payments were still owed.



Compare and contrast the treatment of reserved funds with other construction funds. The Texas Legislature, through the adoption of Chapter 162 of the Property Code, the Trust Fund Act provides protections beyond lien rights for construction funds. The Act governs how owners, contractors, subcontractors and suppliers manage the flow of project funds. It requires that all construction payments and loan receipts be used to pay obligations incurred by the owner or contractor related to the identified construction project. Thus, once an owner draws down funds from a bank for the project, those funds must be paid into the funding “pipeline” for that project: bank » owner » contractor » subcontractor » supplier. Using funds for non-project purposes is a misapplication of trust funds and carries possible criminal penalties.

Unfortunately, in its current form, the Trust Fund Act does not provide protection for reserved funds, despite the Property Code’s requirement that they be reserved for the benefit of the subcontractors and paid upon completion of the project. Extending the protections available in the Trust Fund Act to reserved funds would greatly reduce exposure for subcontractors. This can be done by the Texas Legislature statutorily classifying reserved funds as trust funds, whether they have been actually reserved or not. By making this change, Texas law will treat all dollars on a construction project the same – whether they are the first dollar or the last, the construction team’s interest must be protected. ★



# Bonds On All Projects On Public Land

In a growing trend, private entities are leasing land from public owners and constructing improvements outside the confines of Texas' Public-Private Partnership statutes (Tex. Gov't Code, Ch. 2267). This usually occurs as a coordinated project between the public entity and private developer. Unfortunately, these arrangements exploit a gap in Texas property law at great risk to contractors.

In Texas, with a few exceptions, payment and performance bonds are required on all public construction contracts. Performance bonds protect the governmental entity and ensure it has hired a reputable company that is appropriately capitalized. Payment bonds protect the subcontractors and suppliers and are necessary because the law prevents them from placing a mechanic's or materialman's lien on public property like they can on private property. Although it is not required by statute, and is less common, some private projects are also bonded.

When the current law was adopted, it made sense to tie the bonding requirement to the classification of the job as "public" based on the project developer being a public entity. However, as property development and construction contracting arrangements have become more complicated over time, it has exposed a need to change the law and tie the bonding requirement to the classification of the job as "public" based on the underlying ownership of the property. After all, the public policy behind the bonding requirement is based on the fact that a contractor cannot lien public property and the public entity is responsible for public lands and resources.

## Performance Bonds

The public entity has a responsibility to its constituents for the proper stewardship of their tax dollars. Thus, the public entity must ensure a performance bond is in place. An integral

part of procuring performance bonds is an underwriting review of the construction company. During this review, the surety assesses the qualifications of the contractor, including experience and ability to perform, and the financial stability of both the company and its owning principals. Thus, requiring performance bonds for all projects on publicly-owned land protects against unqualified or undercapitalized companies that might leave contractors or suppliers in that community unpaid for labor or materials, and leave the community with an incomplete or poorly constructed improvement.

## Payment Bonds

As mentioned above, payment bonds are necessary on public projects because a subcontractor or supplier cannot exercise its lien rights against public property. Payment bonds ensure there is a mechanism in place to compensate contractors for work in the event the public entity faces financial difficulties or other problems occur on a project. So, what happens if a public entity fails to require a payment bond on a public job? Under current law, the public entity steps in as the "surety" and is liable for costs as if there was a payment bond in place. This provides equitable protection for the construction team. However, under current law, neither the payment bond requirement, nor this safety net is available on private projects on public lands.

The 88th Legislature will convene in 2023 and it should take up legislation to amend the Texas Property Code and the Texas Government Code to close the loophole in the current system. The public policy reasons for requiring both payment and performance bonds on public projects and ensuring that the public entity is liable to the construction team absent a bond are just as valid for construction projects by private developers on leased public property. ★





# When Preparation Meets Opportunity:

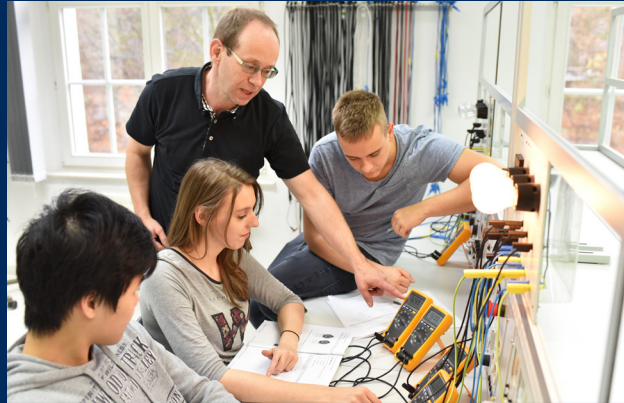


## Building Builders the Next Generation of Workforce Development

By Jane Hanna, President/Executive Director, Construction Education Foundation (CEF)

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Even prior to the COVID-19 pandemic, demographic and labor-market data showed shrinking labor force participation and a growing number of unfilled jobs in the construction industry. The National Center for Construction Education and Research (NCCER) has determined that as soon as 2023, the United States will have a shortage of 1.5 million skilled craft professionals. Additionally, the average age for a skilled craft professional in the United States is 51 years of age. Thus, in the very near future the last of the “baby boomers’ generation” will be retiring from our workforce.



According to the U.S. Bureau of Labor Statistics, by the year 2030, 41 percent of skilled craft professionals will be retired from ALL construction crafts, and yet the building of structures to support transportation, healthcare, retail, commerce, education and housing -- the total social and economic infrastructure of Texas and our country -- must continue amid impossible odds.

The Associated General Contractors organization stated that “Eighty-four percent of commercial construction companies surveyed in Texas reported having difficulty finding skilled craft professionals. (Dallas Morning News, 8/28/2019) This is reinforced by the annual Labor Market Survey by Interlink, a North Central Texas Labor Market forecasting non-profit organization, who found that jobs in the construction industry continue to be at the top of the list of industries in need of a skilled workforce.

So how do we flip the script? How do we keep this vital industry for our very existence and the economic engine of the great State of Texas and the United States strong and viable? Preparation through coordinated education.

Texas is a state that values Workforce Development. Through Texas’ Workforce Commission Skills Development Grants, Apprenticeship Funding, and input from the Higher Education Coordinating Board, Texas is on track to develop a highly skilled workforce. We have many great partnerships already in place in the State of Texas for workforce development. Partnerships between education and industry training organizations that provide workforce

development training for our industry from entry level through construction management.

The Journal for Planning for Higher Education in a recent article noted, “[t]hese jobs require more than a high school diploma, but potentially less than a four-year bachelor’s degree or a two-year associates degree. This category of education, skills, and jobs include 35-50 plus percent of all new job openings projected after 2020.” Moreover, with regard to the construction industry, the National Center for Construction Education and Research found that 7 out of every 10 jobs require

less than a 4-year bachelor’s degree.

Texas has responded to the data. There are high school programs already in place in our state and new ones being established through industry associations and education collaborations. These programs reach back into high schools to begin training programs that will lead to employment and additional workforce training funded by their employer post high school graduation. A career path that begins while the student is still in high school.

Instruction must continue to be innovative to meet the needs of the workforce for students to maximize their learning capacity. Virtual learning, simulators, online curriculum enhancements, and direct lab time with materials and equipment are essential. Documentation of on-the-job training for reinforcement of skills and knowledge and exposure to new equipment, technology, and trends in our industry must be ongoing.

In the State of Texas, we continue to see increased support for workforce development from our state government and education/industry partners. We have all the pieces in place to succeed in workforce development now and in the future. It is going to take all of us working together focus on our mission.

Preparation is meeting a huge opportunity...and we are building builders...the next generation of workforce development. ★



# Why E-Mods Don't Equate to Safety

by Steve Math

**\*Republished from 2015 TCA Newsletter**

Does a company's workers' compensation experience modification factor ("e-mod") really serve as an effective proxy for a company's safety practices? And should companies with e-mods greater than 1.00 be excluded from working on job sites? Perhaps not!

The e-mod was originally designed as a premium calculation factor. It was not intended to serve as an indicator of overall contractor safety. Anyone using the e-mod for other than its intended purpose (to modify premium) is using it incorrectly and may go down a path leading to incorrect and inequitable conclusions about contractors' safety.

## Top Reasons Why E-Mods Don't Necessarily Equate to Safety

**E-mod is a Pricing Modifier** - The insurance industry in Texas is limited to using fewer than 400 different base rates for business classification groupings, though there are obviously thousands of different types of businesses. With less than 400 rates it is impossible to accurately price policies for thousands of different kinds of businesses. E-mods adjust the base rate in an attempt to help insurance companies accurately price policies, but they are not a report card on safe practices.

**E-mod Data is Old** - E-mods look back as many as four years to assess current safety levels. The e-mod completely ignores a company's current safety practices and experience in the last 18 months. Project owners would be well advised to assess what contractors are doing today to reduce workplace accidents.

**(Non) Reporting of Claims** - Some employers opt to handle some of their own claims in-house (out of pocket) and not report them to their workers' comp carrier. In some instances, self-handling of claims may even be illegal. On the other hand, non-reporting of claims is a way for employers to artificially lower their e-mod, without really improving workplace safety.

**Subrogation** - Subrogation recoveries from third parties serve to offset reported claim amounts. These recoveries are often litigated and take many years for the recovery to occur. By the time the subrogation recoveries are made, time may have elapsed, whereas subrogation recoveries are not reflected in the e-mod.

**Changes to Formula** - The National Council of Compensation Insurance (NCCI) promulgates the e-mods utilized by workers' compensation insurers. NCCI regularly refines the parameters of the e-mod formula. Some changes are small, others material. One material change that NCCI made in 2015 was increasing the "split point" in their formula (Texas) from \$5,000 to \$15,000. While this change was stair stepped in other states over three years, the change in Texas was made all at once. This resulted in some dramatic increases/decreases at the individual employer level, without any real changes in underlying safety.

**The Bar Keeps Getting Higher** - Technological and safety improvements in business have resulted in a decreasing claim frequency trend in Texas and throughout the nation. Some contractors, even if they have no losses, may see an increase in their e-mods, driven primarily by the statewide drop in claim frequency, not by any deterioration in their safety practices.

**Mergers, Acquisitions, etc.** - Companies are merged, sold, and acquired all the time. Also, it is not uncommon for some companies to dispose of unprofitable business segments and/or venture into new segments over time. The e-mod is slow to react to changes in the underlying business model.

**Stuff Happens** - Consider an electrical contractor that is traveling from one job site to another and is struck by a truck crossing the median of the road. The electrical contractor did not do anything wrong, nor did their employer. However, because the electrical contractor was injured in the course and scope of their employment, they are entitled to workers' comp benefits, and a claim is made. These types of claims will have an adverse impact on the e-mod, through no fault of the injured worker or their employer. (Note: There may be a potential subrogation action against the salt water hauler, but a financial recovery is uncertain, and as previously discussed, may be prolonged over several years.)

**Fraud** - Unfortunately, claimant fraud is prevalent in the workers' comp system. Some employees fake claim occurrences, or claim workers' comp benefits for injuries that were sustained outside the scope of their employment. Fraud is also prevalent among injured workers that sustained legitimate work-related injuries, but exaggerate the extent of their injuries and/or act as malingerers with respect to

*Continued on page 19...*

# What's in Your Contract?

## Documents Incorporated by Reference

When a document is incorporated by reference into a contract, it becomes part of the contract as if it was typed out, word for word, in the contract. It is common practice in the construction industry for the contract between the general contractor and the subcontractor to incorporate the “original” or “prime” contract between the owner and the general contractor. When that happens, all of the terms and conditions in the original contract, such as change order procedures, notice deadlines and arbitration clauses, are made a part of the general contractor - subcontractor contract.

On a large commercial project, it may not be uncommon for there to be third, fourth or even fifth-tiered subcontractors that are bound by contractual provisions that have flowed down from the owner and general contractor. Unfortunately, all too often, contractors are unable to know what they are being asked to agree to because an owner or other contractor fails, or refuses, to furnish the documents incorporated into their contract. Similarly, a general contractor might not be provided geotechnical or survey reports, yet they would be bound to those documents.

This practice of “hiding the ball” places unacceptable risk on subcontractors and is contrary to the sacredly held doctrine of Freedom of Contract. It is true that the contractor may be able to negotiate the terms and conditions in its contract, but absent knowledge of the contents of incorporated documents, the contractor

will be bound by terms and conditions it has no control over because the incorporated documents were negotiated by upstream parties. This creates risk and liability for the contractor and the potential for litigation between all parties involved in the project. All parties should know their rights and responsibilities under a contract before the contract is signed.

**The foundations of contract law require a “meeting of the minds” in order for a contract to be valid.**

**How can you have a “meeting of the minds” if only one mind knows what is truly in the contract?**

So, what needs to be done? The Texas Legislature should clarify in statute that documents that are incorporated by reference must be provided to the requesting party prior to contract execution. If the documents are not provided upon request, the terms and conditions in those documents may not apply. For ease of use, the statute can allow for the upstream party to redact non-relevant portions of the documents (e.g. contract price) and make the documents available on a website or file hosting service like Dropbox™.

It is in all parties’ best interests for everyone involved to have regular and fair access to all documents during negotiations, and after the fact, for compliance. The foundations of contract law require a “meeting of the minds” in order for a contract to be valid. How can you have a “meeting of the minds” if only one mind knows what is truly in the contract? The Texas Legislature must take steps to amend the Texas Business & Commerce Code to correct this inequity in the construction industry. ★







American Subcontractors Association has a new Texas chapter in Austin! The Austin Chapter will be the fifth ASA chapter in Texas joining ASA-North Texas, ASA-Houston, ASA-San Antonio and ASA-Rio Grande Valley.

The Chapter Kick Off Meeting will be Thursday, January 12th at 4:00 PM. Registration and more information are available on its website [www.subcontractorsaustintexas.com](http://www.subcontractorsaustintexas.com)

The American Subcontractors Association promotes and protects the rights and interests of subcontractors and suppliers by building strength in community through education, legislation, networking and professional growth.

**"Better Construction Through Fair Construction"**

## New TCA Staff Member Bryan Hadley



Please extend a warm welcome to TCA's new Communications & Member Services Associate, Bryan Hadley. Bryan joins TCA with years of experience in communications, media and marketing.

In his new role, Bryan will work to support TCA's member companies and our member association executives as well as develop and execute a marketing and social media strategy.

If you are in Austin, feel free to stop by the TCA offices and say HELLO!

Fun fact: Bryan has written, directed and starred in 4 feature-length independent films!

## Spotlight on Executive Director

# Jennifer Swinney

American Subcontractors Association  
San Antonio Chapter

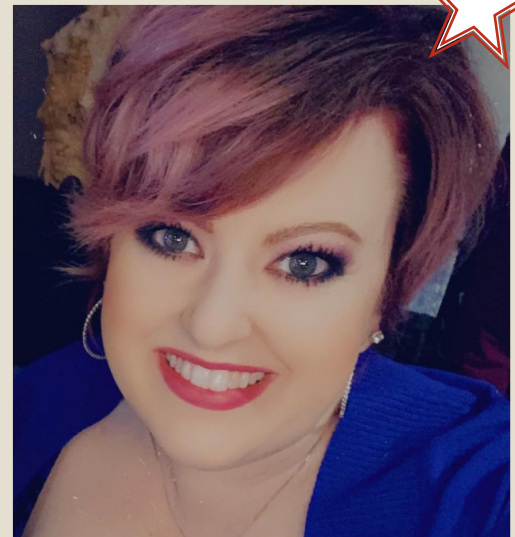


Jennifer Swinney is the Executive Director at American Subcontractors Association - San Antonio Chapter. She works diligently to provide member-based benefits that will help businesses succeed!

Jennifer is the hostess with the mostess as she regularly organizes fun, interactive networking events that bring the San Antonio construction industry together. She is an experienced leader with demonstrated skill in cash flow, analytics and project estimation. A strong business development professional, she brings her all to the forefront when it comes to ASA San Antonio!

Jennifer is an animal lover who has a heart of gold and a smile to match. We are so grateful to have her on our team of TCA association member executives and wish her the best in all of her endeavors!

Thank you for being a part of TCA!



# 2022 Texas General

by Eric W

On November 8th, Texas and the nation held midterm elections. Most statewide offices, including Governor and Lt. Governor, and all State Representative seats were on the ballot, as well as every state Senate district because of recent redistricting. Five State Senators and 25 State Representatives chose not to run for re-election. Every seat in the U.S. House of Representatives was also on the ballot, as well as a third of U.S. Senators, but neither Senator from Texas was facing the voters.

Typically, the party in power in the White House loses congressional seats in a midterm election, which trickles down ballot to state house races as well. With inflationary issues being present in many voters' minds, and President Joe Biden underwater in terms of popularity, the GOP was expected to make gains across the board. However, the *Dobbs* decision on abortion and the Uvalde school shooting tragedy created an incentive for Democratic turnout, perhaps to stem the tide.

Nationally, the Democrats will keep control of the Senate, but have lost their majority in the House despite the fact that the big GOP gains in Congress never materialized, and several governorships flipped or remained in Democratic hands. Predictors of a "Red Wave" sweeping the country largely missed the mark.

**Every statewide office remained in GOP hands, as they have since 1994, and most Republican candidates coasted to victory.**

In Texas, however, it was generally a strong showing for the Republicans. Every statewide office remained in GOP hands, as they have since 1994, and most Republican candidates coasted to victory. Perhaps the lone bright spot for Democrats was that the votes in the Rio Grande Valley were a bipartisan affair, despite many predictions of RGV becoming a Republican stronghold. There were robust showings by some Republican underdogs like Adam Hinojosa in SD 27, but incumbent U.S. Rep. Mayra Flores (R-Los Indios), who secured the 34th Congressional District in a special election in June of 2022, lost to Vicente

Gonzalez (D-McAllen) in a hotly contested effort.

Here is a quick summary of the outcome.

## Statewide Races

**Governor:** Despite a significant investment by Democratic nominee Robert "Beto" O'Rourke, Gov. Greg Abbott prevailed by more than 10 points. Beto never gained the kind of traction he enjoyed in his previous U.S. Senate run in 2018 and carried some baggage from his ill-fated presidential campaign in 2020. Gov. Abbott benefited from a generally strong economic climate in Texas.



**Lt Governor:** Lt. Gov. Dan Patrick (R-Houston) prevailed handily, defeating Democratic candidate Mike Collier, who sought help from crossover GOP voters but underperformed.

**Attorney General:** In perhaps the most hotly contested statewide race, sitting AG Ken Paxton (R-McKinney) coasted to victory over Rochelle Garza (D-Brownsville), an ACLU attorney. Predictions that Paxton's legal and ethical challenges during his tenure would erode his support among moderate Republicans did not materialize on election night, as he prevailed by ten points.

**Comptroller:** Current Comptroller of Public Accounts Glen Hegar (R-Houston) coasted to victory against CPA Janet T. Dudding (D-Bryan/College Station), as was widely expected. Hegar was the leading vote getter among major statewide offices.

**Land Commissioner:** For this vacant seat, State Sen. Dawn Buckingham (R-Lakeway), a physician, trounced Jay Kleberg (D-Austin), a sixth-generation Texan from the prominent King Ranch clan.





# al Election Results

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**Railroad Commissioner:** Republican incumbent Wayne Christian (R-Center) had a strong showing against Luke Warford (D-Austin), a former Texas Democratic Party staffer, prevailing by fifteen points.

**Agriculture Commissioner:** Republican incumbent Sid Miller (R-Stephenville) ran away with the race against Susan Hays (D-Brownwood), a civil rights attorney.

## Texas Senate

Every incumbent Senator won re-election, most by wide margins, as generally predicted. For the open seats, the results are as follows:

**SD 10:** This Tarrant County-based seat was the only district redrawn to change party hands in the Texas Senate. State Rep. Phil King (R-Weatherford) ran unopposed after former State Senator Beverly Powell (D-Burleson) withdrew from the race.

**SD 11:** Conservative State Rep. Mayes Middleton (R-Galveston) prevailed without a runoff in the GOP primary to replace the retiring Senator Larry Taylor. Middleton was unopposed in the general election.

**SD 12:** In this Denton-area GOP seat, which was previously held by retiring Senate Finance Committee Chair Jane Nelson (R-Flower Mound), State Rep. Tan Parker (R-Flower Mound) prevailed 60%-40% over court coordinator Francine Ly (D-Dallas).

**SD 24:** This central Texas seat was previously held by Sen. Dawn Buckingham (R-Lakeway). It was redrawn to be closer to San Antonio and picked up the hometown of former GOP State Sen. Pete Flores (R-Pleasanton), a favorite of Lt. Gov. Patrick. Flores handily defeated Kathy Jones-Hospod (D-Kerrville) by thirty points.

**SD 27:** In a closely watched race, attorney Morgan LaMantia (D-McAllen) narrowly prevailed against Adam Hinojosa (R-Corpus Christi) for the seat previously held by Senator Eddie Lucio (D-Brownsville). Lucio was generally regarded as a conservative Democrat, and South Texas had been widely predicted to turn redder this election cycle. Nonetheless, LaMantia has secured the seat 50.16%-49.84%.

**SD 31:** In this panhandle-based seat previously held by retiring Senator Kel Seliger (R-Amarillo), oil & gas executive Kevin Sparks (R-Midland) ran unopposed in the general election. His victory shifts the political power of this seat southward for the first time.

## Texas House of Representatives

There were very few surprises in the Texas House as well. Among seats with incumbents running for re-election, races of note include:

**HB 45:** Incumbent Rep. Erin Zweiner (D-Driftwood) handily prevailed over City Council member Michelle Lopez (R-Kyle).

**HD 108:** Incumbent Rep. Morgan Meyer (R-Dallas) easily held off Elizabeth Ginsberg (D-Dallas) in a district reconfigured during redistricting to be more Republican.

**HD 118:** In a tight 51.8%-48.2% contest, incumbent Rep.

**With no major surprises  
at the top of the state tickets,  
expect the status quo from the  
Texas political leadership.**

John Lujan (R-San Antonio) again bested Frank Ramirez (D-San Antonio) in a rematch from last year's special election.

**HB 121:** Tenured Rep. Steve Allison (R-San Antonio) coasted to victory against Becca Moyer DeFelice (D-San Antonio) by a ten-point margin.

**HB 134:** Rep. Ann Johnson (D-Houston) will make her second trip back to Austin, emerging victorious against Ryan McConnico (R-Houston).

**HB 138:** Rep. Lacey Hull (R-Houston) also earned her second term in the statehouse by turning back Stephanie Morales (D-Houston).

Among the open seats, some of the more notable races included:

**HD 17:** For this central Texas-area seat, Stan Gerdes (R-Bastrop), a former staffer for Gov. Rick Perry, prevailed over Madeline Eden (D-Bastrop).

**HD 19:** Realtor and former Austin City Council member Ellen Troxclair (R-Austin) coasted to victory over Pam Baggett (D-Austin) in this western Travis County seat.

*Continued on page 19...*





**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 November 2022, we had reached a group premium of approximately \$78 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 \$50.7 million in dividends. The Group's safety efforts made a significant impact in 2022, resulting in the largest dividend distribution ever from Texas Mutual of \$6.8 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](http://www.txconstructionwc.com) or by calling the program administrator, Gina O'Hara at (512) 415-6480 or emailing [info@txconstructionwc.com](mailto:info@txconstructionwc.com). ★



## Built to Last.

**Our group constructs bigger dividends and a safer workplace for you.**

Members of the **Texas Construction Safety Group** are eligible to receive extra dividends, a greater discount on their workers' comp premiums and more. If you are committed to a higher level of safety, join other leaders in your field to maximize the rewards. Be part of a safer Texas.

**To learn more about becoming a member, contact your agent or Gina O'Hara at (979) 774-6238 or [info@txconstructionwc.com](mailto:info@txconstructionwc.com).**

**TexasMutual**  
WORKERS' COMPENSATION INSURANCE  
**STAY SAFE, TEXAS**



While we can't guarantee dividends every year, Texas Mutual has returned \$3.1 billion to safety-conscious policyholder owners since 1999.

©2020 Texas Mutual Insurance Company



# Regulatory Certainty for Employment Laws

Local businesses provide unique and important benefits to their customers and their communities, and Texas must continue to support them to see them thrive. The more they grow, the more they innovate and the more people they can employ, the more they can give back to their communities. There are no losers when local businesses succeed.

Texas cities have been increasingly pressured to pass local employment regulations. However, these local regulations create an inconsistent patchwork of regulations that stifle economic growth and make it more difficult for employers to do business in multiple jurisdictions. These local ordinances can force employers to slash budgets, lay off employees or worse – close their businesses for good.



As one of more than twenty business and industry association members that have joined together to form the Alliance for Securing and Strengthening the Economy of Texas (ASSET), TCA is advocating for smart economic policies that will allow job creators to not only operate, but thrive, and continue to employ millions of Texans. One of these policies is for the state to preempt local ordinances that attempt to regulate the employer/employee relationship. Reasonable exceptions should include contracts between a private entity and a public entity, and of course, there should be no impact on public employers. As with private employers, public entities should have the right to determine what is best for their employees.

While offering better benefits allows businesses to stay competitive and retain top talent, local regulations shouldn't force them to make these costly decisions. Just because a local government mandates something to be done doesn't mean a business can afford it, after all. Small, medium or large – all businesses need to have the freedom to conduct their business in a manner that they determine is best for their industry, their employees and their communities. ★

**Small, medium or large – all businesses need to have the freedom to conduct their business in a manner that they determine is best for their industry, their employees and their communities.**

## **DON'T FORGET! CHANGES TO LIEN LAWS ARE NOW IN EFFECT**

The 2021 Texas Legislature adopted several changes to Texas Property Code Chapter 53 governing lien and bond claims. The changes are effective for any construction contract that flows from an Original or Prime contract signed on or after January 1, 2022. Contracts that flow from Original or Prime contracts entered into before January 1, 2022, are subject to the law in effect prior to that date.

Some of the changes include: elimination of the second-month notice; bumping deadlines falling on a weekend or holiday to the next business day; and clarification of the retainage lien deadline to the 15th day of the third month following completion of the entire project. Additionally, lien releases or waivers no longer need to be notarized and suits to foreclose a lien must be initiated within one year. Finally, the Legislature adopted statutory forms for Notice of Claim for Unpaid Labor or Materials and Notice of Claim for Unpaid Retainage. These forms as well as statutory lien waiver forms, may be found on the Texas Construction Association website, [www.texcon.org](http://www.texcon.org), under the Resources menu item.



# 2023 WALK ON THE CAPITOL

Tuesday, January 31, 2023

## Under the Dome with Political Insiders

2:00 PM - 4:00 PM

DoubleTree Guest Suites Hotel  
303 West 15th Street, Austin

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Tuesday, January 31, 2023

## TCA★PAC Roundup & Legislator Reception

*\*TCA★PAC Membership Required*

5:30 PM - 8:30 PM

Socialize with Legislators & their Staff over Food & Drinks!  
Pelon's Tex-Mex Restaurant  
802 Red River Street, Austin

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Wednesday, February 1, 2023

## Walk on the Capitol

7:00 AM Breakfast, DoubleTree Guest Suites Hotel

9:00 AM Issue Briefing, Legislative Conference Center, Texas Capitol Extension E2.002

10:00 AM Legislator Meetings, Texas Capitol

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## You Must Register to Attend

Hotel Block @ DoubleTree ★ Discounted Rooms Until Jan.15th ★ Hotel Link in QR Code Below



[shorturl.at/pwQRV](https://shorturl.at/pwQRV)



Return this form to:  
Texas Construction Association  
1011 San Jacinto Blvd, Ste 330  
Austin, TX 78701-2494

## Registration Form

Email: [pfinnegan@texcon.org](mailto:pfinnegan@texcon.org)

### 2023 TCA★PAC Roundup & Walk on the Capitol

Tuesday & Wednesday, January 31-February 1, 2023

I will attend: ☐ Political Insiders on Jan. 31st  
(Open to all TCA Members) ☐ The Roundup on Jan. 31st  
(TCA★PAC Membership Required)  
Complete the Form Below ☐ The Breakfast & Walk on Feb. 1st  
(Open to all TCA Members)

Attendee Name & Company \_\_\_\_\_

Attendee Email Address \_\_\_\_\_

TCA Member Assn (If Applicable) \_\_\_\_\_

Cell Phone ( ) \_\_\_\_\_ Office Phone ( ) \_\_\_\_\_

HOME Address w/City & Zip \_\_\_\_\_  
(Home address is necessary to match you with your elected officials.)

*Please use a separate registration form for each attendee.*

### Sponsorship

May use corporate funds

I'll be a Roundup Sponsor for: ☐ \$5,000 ☐ \$2,500 ☐ \$1,000  
☐ A check is enclosed ☐ Charge the card below ☐ Please invoice me

Name on Credit Card \_\_\_\_\_ Card Billing Address: \_\_\_\_\_

Card No. \_\_\_\_\_ (street) \_\_\_\_\_

CID: (3-4 digits) \_\_\_\_\_ Expiration Date: \_\_\_\_\_ (city, zip) \_\_\_\_\_

*Deadline for sponsorship is January 1, 2023*

### TCA★PAC Membership Contribution

May NOT use corporate funds. Please select option A or B.

A. ☐ I want to attend the Roundup. I have donated \$100 or more to the TCA★PAC after February 1, 2021

B. ☐ I want to attend the Roundup. Please accept my TCA★PAC Contribution:

☐ Platinum Badge Member \$5000+ ☐ Gold Badge Member \$1000 ☐ Silver Badge Member \$500

☐ Blue Badge Member \$250 ☐ Red Badge Member \$100

☐ My personal check (payable to TCA★PAC) is enclosed ☐ Charge the NON-corporate card below ☐ Invoice me

Name on Credit Card \_\_\_\_\_ Card Billing Address: \_\_\_\_\_

Card No. \_\_\_\_\_ (street) \_\_\_\_\_

CID: (3-4 digits) \_\_\_\_\_ Expiration Date: \_\_\_\_\_ (city, zip) \_\_\_\_\_

*Your contribution may also be made at [tcapac.org](http://tcapac.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 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.**

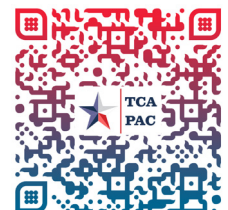
## **How do you get involved? Contribute to the TCA PAC.**

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](http://www.tcapac.org).**







# Announcing

## A NEW 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](mailto:pfinnegan@texcon.org)

P: 512-473-3773

### ANNOUNCING 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 Your TCA Staff!



**Raymond Risk** is the founding President and CEO of TCA.

Prior to entering the Texas lobby and association management worlds, Raymond owned a painting company for 17 years.

He holds a Bachelors in Business from Austin College and a Masters in Business from University of Texas-Austin. He is a licensed Texas Real Estate Broker and Texas Insurance Agent, holds a Construction Risk and Insurance Specialist (CRIS) designation, and is a construction industry arbitrator with the American Arbitration Association.

Fun fact: Raymond didn't understand why the general contractor who sent him his first commercial painting contract never sent him a signed contract or returned phone calls. He later surmised it was because the contract Raymond returned had more red markups than regular type! ★



**Patrick Finnegan** is currently the Vice President of Operations. He has been with TCA for almost a decade. Where does time go?!

Prior to entering the association world, Patrick and his brother were owners of an organic juicing company called Juice Dawgz in Austin. They had great success and even landed several concession stands at DKR Texas Memorial Stadium for University of Texas Longhorn home football games.

Patrick graduated with a hospitality management degree with honors from Texas Tech University. He spent his first two years at the University of Arizona.

Patrick enjoys sporting events, keeping physically fit, and is well-traveled over the globe!

Fun fact: Patrick was actually named Sonny Finnegan for two weeks when he was born until his grandfather demanded that his grandson have an Irish name. Patrick now has an Australian Sheppard named Sonny. ★



**Jennifer Fagan** is currently the Vice President for Governmental Affairs. She is a registered lobbyist and manages TCA's team of outside lobbyists responsible for advocacy before the Texas Legislature.

Jennifer has worked in and around the Texas Legislature for more than 25 years, starting with her first job out of law school as a Legislative Aide for Appropriations Chairman Robert Junell (D-San Angelo), and later for Senator Robert Duncan (R-Lubbock) for 11 years as the Director of the Senate State Affairs Committee.

Jennifer enjoys planning (anything), baseball, traveling and cooking. She and her husband live in Austin and they have two kids in college in Washington state, so she is very familiar with certain airline schedules!

Jennifer received a B.B.A. from Texas Tech University (Guns Up!) and a J.D. from the University of Tulsa.

Fun fact: Jennifer has the proverbial "black thumb". She's not allowed to touch the office plants. ★

**Susan West** has been with TCA for over 16 years and is the official Manager of Lots of Things.

Susan regularly assists with accounts receivables, organizing events, and elevating the mood of the office. She is also our in-house graphic designer; a master of Adobe™ everything and produces anything that resembles "creative" or "artistic" that comes out of the TCA offices.

Susan put herself through college, earning her bachelors in Photography from Sam Houston State University. Susan says, "Finding what you love to do and exploring it is the spice of life!"

She enjoys gardening, swimming, biking, reading about metaphysical subjects, Chinese style gung fu tea, and meditation. She has lately taken an interest in learning practices of homesteading and sustainable living. She also has an addiction to art supplies, so hide your markers and any colorful writing instruments!

Fun fact: Susan alphabetizes her spices by their Latin names and speaks fluent Dothraki. ★



## Experience Mods *Continued from page 7...*

returning to work. Even the best, (and most safety conscious) employers may end up with a “rotten apple” that drives up claim costs and e-mod values.

Solely using the workers’ comp e-mod as a qualifying criterion for awarding contracts is a flawed approach. The e-mod may

not be a good judge of a company’s safe practices, and many “safe” contractors may be unfairly disqualified from bidding on jobs if too much credibility and focus is directed toward the e-mod. ★

## 2022 Election Results *Continued from page 11...*

**HD 37:** Janie Lopez (R-San Benito) turned back former Senate staffer Luis Villarreal, Jr. (D-Harlingen) in this Valley district, flipping a seat previously held by Democrat Alex Dominguez.

**HD 61:** Former police officer Fredrick Frazier (R-McKinney) defeated Sheena King (D-Frisco).

**HD 63:** City Council member Ben Bumgarner (R-Flower Mound) overcame H. Denise Wooten (D-Flower Mound).

**HD 65:** Also in North Texas, Kronda Thimesch (R-Denton) coasted to victory against Brittney Verdell (D-Carrollton).

**HD 70:** In one of the more hotly contested races, Jamee Jolly (R-Plano) was narrowly bested by former House staffer Mihaela Elizabeth Plesa (D-Dallas) by a 50.7%-49.3% margin. This flips a seat previously held by Rep. Scott Sanford (R-McKinney).

**HD 76:** Suleman Lanlani (D-Sugar Land), a physician, beat Dan Mathews (R-Sugar Land) for this Houston-area seat, which was previously located in the El Paso area, but held by a Democrat. Redistricting moved HD 76 to Sugar Land.

**HD 92:** Salman Bhojani (D-Euless), a lawyer, defeated realtor Joe Livingston (R-Arlington), flipping this North Texas seat previously held by Rep. Jeff Cason.

**HD 114:** Former U.S. Congressman John Bryant (D-Dallas) won this Dallas-area seat that was vacated by Rep. John Turner by defeating Sarah Lamb (R-Dallas), who has placed on the ballot after GOP primary winner Mark Hajdu was removed for not meeting residency requirements.

**HD 122:** Mark Dorazio (D-San Antonio), a former GOP County Chair, bested Angi Aramburu (D-San Antonio) for the right to replace the retiring Rep. Lyle Larson.

**HD 133:** In western Harris County, Mano DeAyala (R-Houston) held off Mohamed Maarouf (D-Houston) to replace retiring incumbent Jim Murphy.

winning streak at the statewide level will be perceived as a mandate for staying the course, by and large.

**Texas Senate:** The Senate is presently composed of 18 Republicans and 13 Democrats, but the election has delivered a final split of 19 - 12 favoring the GOP. Because the Senate previously reduced the threshold needed to move legislation from 21 to 18, this in and of itself won’t change how the Senate functions. However, the Senate lost several tenured, more centrist members and is picking up some very conservative voices. This suggests that Lt. Gov. Patrick, already among the state’s most conservative leaders, will further solidify his grip on the Senate.

Some structural changes to the Senate are likely to take place. There will be an effort to push out Democratic chairmen – a move backed by the state Republican party and which scored well among the party faithful on the primary ballot. And with so many freshmen limiting the pool of GOP chairs, watch for mergers among Senate committees, with Jurisprudence perhaps folded into State Affairs, and a consolidation of the Natural Resources and Water/Ag/Rural Affairs committees.

### House of Representatives

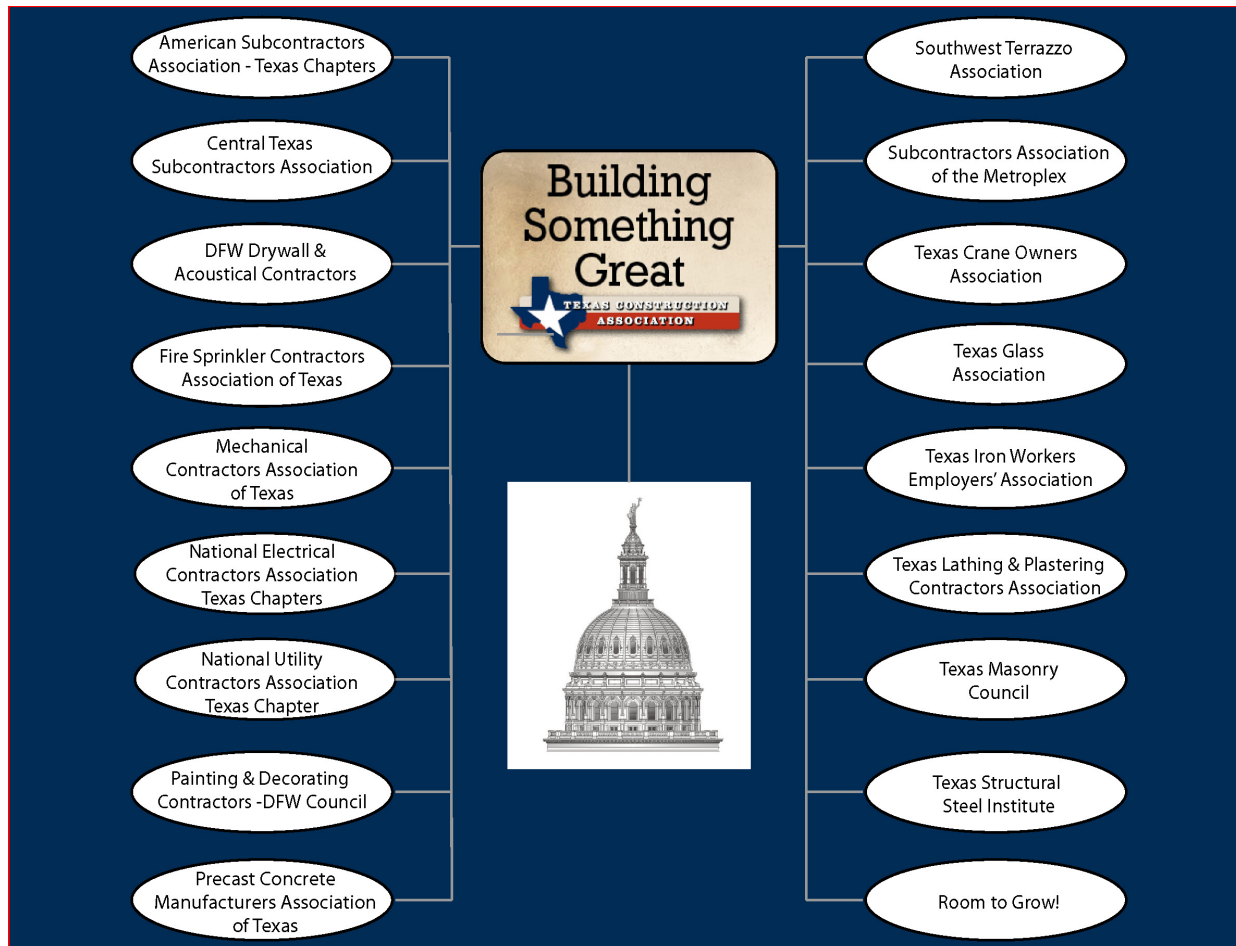
Pre-election, the partisan split in the Texas House was 86 Republicans and 64 Democrats, and after all of this, it remains exactly the same - Janie Lopez (R-San Benito) picked up HD 37 for the Republicans, and Mihaela Plesa (D-Dallas) secured HD 70 for the Democrats. Like the upper chamber, this does not crest any meaningful procedural threshold that modifies how the House functions. Absent a very unexpected turn, Speaker Dade Phelan (R-Beaumont) will remain comfortably in charge of his House colleagues and the House agenda.

While the 87th Legislature in 2021 was considered among the most conservative in history, the House will likely continue to be a bulwark against the more conservative Senate. In particular, be on the lookout for House efforts to mitigate the impact of the *Dobbs* decision with certain exceptions to abortion prohibitions, as well as twelve-month continuous postpartum coverage under Medicaid and other policy issues meant to benefit pregnant women and their kids.

There will be a significant number of new chairmanships, given all the turnover, and a lot of new staff. A mighty education effort on legislative priorities will need to be undertaken in order to advocate successfully among all the new faces. ★

## What This All Means...

**Statewide:** With no major surprises at the top of the state tickets thus far, expect the status quo from the Texas political leadership. Gov. Abbott had perhaps the most formidable challenge of his electoral career by Beto O’Rourke, but his comfortable victory suggest most Texans are generally pleased with his stewardship. The GOP continuing its unbroken



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