

2003 Legislative Agenda Adopted by TCA Board

CONTINGENT PAYMENT

Make void and unenforceable any contract clause that makes payment to a party contingent upon receipt of payment from another party.

INDEMNIFICATION (Partial progress in 77th session)

A company should be accountable for its negligence and not transfer this liability. Contract clauses that impose such transference should be made void and unenforceable.

LIEN LAW REFORM

Simplify the entire lien law procedure by changing lien law to a pre-notification system.

PROMPT PAY - PUBLIC WORKS

Strengthen the current public prompt pay laws to include the right to stop work in the event of non-payment.

RETAINAGE - INTEREST

Require interest to be paid on retainage withheld.

SOVEREIGN IMMUNITY

A governmental entity should not stand behind the doctrine of sovereign immunity for construction contractual disputes. The legislature must allow for a system whereby construction companies have a right to payment for their services without having to obtain legislative permission to sue or to get paid.



There is nothing like a little face-to-face conversation to get our message across to your legislator in Austin. Your involvement in the process of educating the legislators about construction issues is essential to our getting meaningful legislation passed or harmful legislation stopped. So plan to make a trip to Austin for YOUR business.

MARK YOUR CALENDAR

Join fellow Subcontractors and Suppliers as we

March to the Capitol on TCA Legislative Day

When: Tuesday, January 28, 2003

Time: 10:00 am Briefing
11:00 am Walk to Talk with Legislators
1:00 pm Lunch with your Legislator

Where: Omni Austin Hotel
700 San Jacinto (between 7th & 8th)
Capital Ballroom
Austin, Texas

Bring: Yourself, a fellow sub or supplier, comfortable shoes

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or check the website for more information.

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Newly Elected Lt. Governor Dewhurst Looking Forward To Challenges

“Solving the State’s budget crises, getting our economy back on track, improving our state’s transportation system, as well as passing liability and insurance reforms are just a few of the issues we have to tackle this year,” says Lieutenant Governor David Dewhurst. The Lieutenant Governor further stated that this will be one of the most challenging legislative sessions in the past several decades.

“With a budget deficit of at least \$5 billion dollars facing us, the Legislature must look closely at what our expenditures have been, cut the waste and meet the priority needs of our state”, states the Lt. Governor. Dewhurst says he is working closely with the Governor and the Speaker to cut expenditures and to meet the state constitutional mandate to pass a balanced budget.

Other areas of concern expressed by Dewhurst include the availability and affordability of insurance. “This includes those in business trying to get affordable liability insurance as well as homeowners trying to get insurance for their homes” states the Lt. Governor. He has seen firsthand the substantial increases in insurance costs for businesses and home-

owners and feels we must try to go to the causes of the increase and make the necessary changes.

He also said new and innovative measures must be adopted to reduce the gridlock in our transportation system. As a native Houstonian, he is well aware of the traffic problems of our state. “‘You cannot get there from here’ should not and will not become a description of our transportation system”, says Dewhurst. He is working with the Governor, various groups and citizens on proposed solutions.



Lt. Governor David Dewhurst

As Lt. Governor, Dewhurst will arguably be the most powerful elected official in the State. The Lt. Governor presides over the Texas Senate, appoints the Chairpersons and members of the various Senate committees and controls the flow of Legislation that is considered by the Senate. These powers effectively give the Lt. Governor veto power over any piece of legislation—long before it ever gets to the Governor’s desk.

The Lt. Governor says his governmental experience, as well as his experience in starting and running his own businesses and making them successful, will be beneficial in his role as the presiding officer of

the Texas Senate.

Dewhurst has served for the last four years as the Commissioner of the General Land Office. In this post, his responsibilities included the management of more than 20 million acres of state lands and mineral interests, the state’s coastal resource protection programs and veteran’s programs. He served as Chairman of several boards, including the School Land Board, Veteran’s Land Board and Coastal Coordination Council.

Achievements while Land Commissioner included earning more money for public education through the new State Power Program in which low cost electricity is sold to Texas public schools. He also provided more benefits to veterans, including certifying almost

see **DEWHURST**
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Member Mentions

APHCC-Texas

Eddie Hollub, Modern Plumbing (Pasadena), was recently elected 2002-2003 President of National PHCC. Eddie has been very active in PHCC in the Gulf Coast Chapter and the State PHCC Chapter, having served as President of both groups.

The Annual APHCC-Texas state convention, exhibits and golf tournament will be held at Lakeway Resort June 19-21, 2003. Lee Roy Jordan, Dallas Cowboys "GREAT", will be the keynote speaker and celebrity golfer. This year the Oklahoma PHCC chapter is co-sponsoring the convention with APHCC-Texas for the first time.

For more information, contact Nancy Jones on 512-454-3445.

ASA-Texas

January 27-30 is the Texas Construction Business Leaders' Conference at Lakeway Resort in Austin. For more information go to the ASA-Texas web site: www.asatexas.org or call Paula on 512-791-4701.

ASA-North Texas

In November 2002, the Annual General Contractor night was a big success with over 400 people attending. The 25th Annual Awards Night – "Denim & Diamonds" – will be

held at the Circle R Ranch in Flower Mound. The Texas Lien and Bond Claims Seminar will be held on March 6th and the Killer Contract Clause seminar will be held on May 8th. In conjunction with the Construction News Service, the ASA-NTC will have a plan room service available in the first quarter of 2003. For more information contact Linda White on 817-640-8275.

Texas Fire Sprinkler Contractors Association

A General Membership meeting will be held on February 21st at the DFW Airport. The 5th Annual Day at the Races will be held at Lone Star Park in Grand Prairie on Sunday, May 4th followed by the 14th Annual Children's Charity Golf Tournament at Canyon Creek Country Club in Richardson on Monday, May 5th. For more information, contact Carol McCain on 877-894-3011.

Texas Glass Association

Larry Roepke of Floyd's Glass in Austin received the LOU GREEN AWARD, recognizing Larry as the outstanding glass professional in Texas for 2002. Congratulations to Larry!

TGA has announced that the 2003 TEXpo will be October 2-5 at the Adams Mark Hotel, San Antonio, Texas. For more information, contact Virginia Lee at tgan-ga@sbcgloab.net or on (713) 682-3834.

TCA Hosts Legislative Program

The Texas Construction Association is pleased to present Effective Legislative Advocacy with Mr. Joe Gagen during the American Subcontractors Association of Texas' Construction Business Leaders' Conference. The conference will be held January 27-30, 2003 at Lakeway Resort on Lake Travis outside of Austin. The interactive presentation by Gagen, a nationally recognized speaker on legislative communication, will show how to get a message across effectively to legislators.

ASA-Texas has invited all TCA members to attend the conference. Information, including registration forms, can be obtained at the ASA-Texas web site: www.asatexas.org.

ELECTIONS

continued from page 5

Gary and Mary Sutherland, San Antonio (hosting reception for Senator Jeff Wentworth);

Bob and Mary Bertin, Houston (hosting reception for Senator-elect Kyle Janek);

Virginia Lee, Houston (hosting receptions for Senator-elect Tommy Williams and for Senator John Whitmire);

John Kunz, San Antonio (hosting reception for Rep. Art Reyna);

Jennifer Junker, Dallas (hosting reception for Rep.-Elect Dan Branch);

Nick and Evelyn Page, Austin (hosting reception for Rep.-Elect Dan Gattis);

JoRae Wagner and Todd Aune, Harlingen (hosting reception for Sen. Eddie Lucio);

Kenny Hausenfluck, Pharr (impromptu money-raising for Sen.-Elect Juan Hinojosa);

Travis Blair, Burleson; Danny



Sharron Cotton, Sen. John Carona, Roger Cotton

Green, Mansfield; and Gene Morgan, Colleyville (breakfast for Sen.-Elect Kim Brimer during primary);

Charlie and Dana Koerth and Roy Honeycutt, Arlington (hosting reception for Senator Chris Harris);

Bob and Carolyn Lightfoot, Houston (hosting reception for Senator Jon Lindsay);

Roger and Sharron Cotton, Garland (hosting reception for Senator John Carona);

Dennis and Clarrisa Lewis, Rockwall (hosting reception for Senator David Cain);

Gene and Carol Morgan, Colleyville (hosting reception for Sen.-Elect Kim Brimer);

Steve and Lynn Rians, College Station (hosting reception for Senator Steve Ogden);

Jason Schnurr, Austin (hosting reception for Senator Gonzalo Barrientos);

Brian and Lisa Chester, Plano (hosting reception for Senator Florence Shapiro);

Wilbur and Heidi Davis, Welfare (hosting reception for Senator Frank Madla).

There were many subcontractors and suppliers who attended these receptions and made them successful. Many attended multiple recep-

tions and made multiple contributions! These members took time from their business and their families to meet the Legislators and candidates.

When these subcontractors and suppliers contact these Legislators about issues important to our industry during the next Legislative session, it will be with a person they know and have supported. Also, the Legislator knows them as well and knows they are supporters.

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\$1 billion in below-market rate loans at no additional costs to taxpayers. Additionally he reduced the budget and workforce at the agency while increasing the productivity.

Dewhurst was appointed by Governor Perry to serve as Chairman of the Governor's Task Force on Homeland Security. This Task Force held hearings throughout the State and adopted 44 recommendations to help make Texas and the state's physical infrastructure safer. This was one of the most comprehensive reports by any state in the nation targeting reduction of the threat of terrorist attack.

Dewhurst grew up in Houston and graduated from the University

of Arizona. In the 1970's, he served in the United States Air Force and later worked for the Central Intelligence Agency and the State Department. After leaving government service he founded a diversified energy and investment company. He was an early developer in the mid-1980's of an electric cogeneration business. In these efforts and others, he earned a reputation as an innovative and successful businessman.

For the first time since Reconstruction, the Governor, Lieutenant Governor and Speaker of the House will all be Republicans. Along with Lt. Governor Dewhurst, Rick Perry will serve as Governor and Rep. Tom Craddick will serve as Speaker of the House. All three officials have been working together on

issues such as the budget since election in November.

Lt. Governor Dewhurst says that he identifies with those in the construction industry as he "is used to creating jobs, taking risks and meeting a payroll". With his experience in the oil and gas business in the early 1980's, he states he is no stranger to overcoming economic adversity, making the most out of available resources and making sure his companies are run efficiently and effectively.

One of his goals as Lt. Governor is to ensure that Texas is a good place to own a business, to work and to live. He states that "he looks forward to working with groups such as the Texas Construction Association to help ensure these goals are accomplished."

Liability Reforms Proposed To The Texas Legislature

2003 looks to be a year that the Texas Legislature will consider meaningful liability reforms. Two tort reform coalitions, the Texans for Lawsuit Reform and the Texas Civil Justice League, have ambitious agendas for the upcoming session.

Proposals by the groups include the following:

- **Offer and Settlement.** This proposal would provide incentives for parties to make and accept reasonable settlement offers early in lawsuits; plaintiffs who unreasonably reject an offer may be liable for costs including attorney fees.
- **Proportionate Responsibility.** Allow all potentially responsible parties to be submitted to the jury or fact finder and make changes in the present settlement credits and contributions law that unfairly penalizes defendants.
- **Class Action Litigation.** Provide for appeal of class certification decisions immediately and provide for greater reasonableness in the awarding of attorneys fees.
- **Legal and Judicial Ethics.** Provide the Attorney General with the authority to pursue disciplinary investigations of lawyers for violations of the rules of professional conduct.
- **Punitive Damages.** Eliminate multiple punitive damage awards.
- **Venue.** Curb the abuses of venue shopping and allow for immediate appeal of venue decisions.
- **Statutory Employer.** Provide the same statutory employer protections to all upstream entities in the construction chain.
- **Prejudgment Interest.** Eliminate prejudgment interest of awards of future damages and establish a more rea-

sonable judgment interest rate.

- **Evidence Regarding the Use of Seat Belts.** Allow the admissibility in a personal injury suit the failure to wear a seat belt.
- **Civil Jury Service.** Jurors should be drawn from registered voter lists rather than all persons with a driver's license.

There will likely be other proposals during the session. Mold related proposals are also likely to be filed, and the reform groups are looking at these issues.

7th Annual Health and Safety Conference April 9th and 10th, 2003

The Texas Safety Summit brings top safety and health professionals together to provide information and education on workplace health and safety issues to all

types of people who play a role in safeguarding Texas workers. The conference is open to all segments of the Texas workforce, including small and large employers; public and private sector employers; and workers' compensation subscribers and non-subscribers.

For complete details, online registration, and hotel information go to the Texas Workers' Compensation web site: www.twcc.state.tx.us.



Insurance and Mold Don't Mix

General Liability Insurance Rates Increase

Like Texas homeowners, subcontractors have seen their liability insurance rates substantially increase, or in some cases, their insurance cancelled or not renewed.

In an informal survey of members of the Associated Plumbing-Heating-Cooling Contractors Association, 30% of those who responded (21 of 69) stated that their liability had been cancelled or non-renewed in the last year. Over 80 % of the respondents had premium increases in the last year.

With mold claims being on the increase, a majority of the respondents stated that their liability insurance carriers have either limited or eliminated mold coverage.

Members of the Texas Fire Sprinkler Contractors Association have reported increasing difficulties in locating affordable liability insurance — particularly if a portion of the business includes family homes, condominium or apartment work. There have been some reports of non-renewal or renewals with substantial increases in premiums if the subcontractor does as much as 5% residential.

Leaders of the Texas Construction Association and the APHCC have begun a series of meetings with key Legislators involved in the insurance reforms currently being proposed. While most of the proposed insurance reform legislation focuses on homeowners insurance, some of the remedies proposed may need to be expanded to the liability market if the current conditions persist. Presently the Texas Department of Insurance has little authority to oversee the general liability market.

Medical Report Shows Lack Of Scientific Support For Mold-related Health Claims

In response to the attention being focused by the media and by the increase in mold related claims, The Council on Scientific Affairs of the Texas Medical Association conduct-

ed a search of medical and scientific literature and contacted national experts to determine the current state of medical science relating to mold.

The Council on Scientific Affairs concluded that the “ public concern for adverse health effects from inhalation of *Strachybotrys* spores (black mold) in water-damaged buildings is generally not supported by published reports in the medical literature.” While some molds are very serious to some people, it appears that for most people most molds do not produce harm.

In the most publicized mold case, which involved a jury award of \$32 million (later reduced to \$4 million reflecting actual damages by an Appeals Court), the trial judge did not allow damages based on the medical claims because of the lack of scientific support.

Copies of the report are available from the TCA office.

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President's Comments

by Raymond Risk, President/CEO

The Session is here. Are You Ready?

Texas Legislators are gearing up for a dynamic session and so should TCA members. During the 140 days beginning on January 14th, the legislators will consider legislation of concern to the construction industry. The session is intense as the Texas Legislature meets for these 140 days only in odd number years.

The focus of TCA's efforts since the 2001 session ended was to craft an agreement with the Associated General Contractors on the contingent payment issue. The contingent payment clause, also known as pay if paid clause, is the biggest pocket book issue for subcontractors. TCA worked very hard during the interim on this issue, but now the tough work begins.

Subcontractors and suppliers should rollup their sleeves. Just because we have reached an agreement with the AGC does not mean that the war is over. For that matter, only one battle is behind us. The biggest battle looms ahead as subcontractors and suppliers attempt to convince 31 Senators and 150 Representatives of the need to pass the contingent payment bill.

So what can you do? First, come to Austin for the TCA Legislative Day on January 28th. Information is on the TCA web site:

www.texcon.org. TCA Members will receive a briefing on the issues that morning and then proceed to the Capitol to visit with the Legislators to let them know what's on your mind. Second, be vigilant in the watch for and respond to communications from TCA. During the legislative session, TCA communicates using email and facsimile. Using these fast methods gets the word to your office, but it is up to you to make certain (1) your office staff handles the communication as a priority and (2) that you respond quickly. Third, visit with your Legislator during the session when he or she returns home. Most

legislators return home on Thursday so Friday is a good time to catch them back home. Fourth, watch for TCA announcements of public hearings on TCA legislation. These are the hearings when you can come testify before the House and Senate committees to let the legislators know how a bill affects your business.

TCA Legislative Issues

The Texas Construction Association's Legislative Agenda is full of issues of concern (see separate article) to subcontractors and suppliers. Here is a summary of some of those that TCA will try to influence this session:

Contingent Payment

(This issue is more fully discussed at the Legislation and the Press & News sections of the TCA website: www.texcon.org.)

There are many contract clauses that deserve close scrutiny and negotiation. However, the effects of most clauses do not have near the devastating potential as a contingent pay clause, which is sometimes referred to as a pay-if-pay clause. These clauses make payment by the owner to the general contractor an absolute condition precedent to the obligation of the general contractor to pay the subcontractor.

Besides making it hopeless to sue the party with whom the subcontractor contracts, the contingent payment clauses affect bond claims, lien claims, and cash flow.

The agreement struck with the Texas Building Branch of the Associated General Contractors will bring relief to subcontractors. All subcontractors and suppliers must use their very best efforts to help get the bill passed.

Obtain more information on contingent payment, including the agreement reached with the AGC, visit the Texas Construction Association Web site: www.texcon.org.

Prompt Pay

In 1999, the Texas Legislature added Section 28.009 to the Property Code. This section provides that a contractor or subcontractor can stop work on a privately owned project if payment has not been made and after a notice has been sent to the owner. In 2003, the legislature will be asked to extend this provision to public works projects. This provision is crucial in an environment of expansive sovereign immunity rights. The provision is really very simple: If a person performs work on a project and does not get paid for that work, then 10 days after sending a notice, the person can stop work and not start work again until payment has been made, including costs of demobilization and remobilization.

Sovereign Immunity

Until this year, the doctrine of sovereign immunity in Texas allowed agencies of the State of Texas to be shielded from lawsuits. Recently, the Texas Supreme Court has extended the doctrine to counties. Contractors Beware! While there is an alternative claims resolution procedure established for work with the state (It is limited, but at least it is something.), this procedure does not apply to counties. Thus, a person working for a county is completely at the mercy of the county in regards to payment under the contract. Regardless of how perfect or timely the contractor performed work under the contract, a county can simply refuse to make payment. The net result is that a county can get a new courthouse at a tremendous discount.

Subcontractors who do work as a prime, e.g. mechanical, painters, flooring, electrical, plumbers (that's right just about any trade), should be equally concerned because they will be affected just like a general contractor. This problem must be addressed by the legislature. TCA will be working with other construction industry associations to help persuade the legislature that the state and counties should honor the contract. If work is performed correctly, payment should be made.

Elections And TCA-PAC Activities

NOVEMBER ELECTIONS PUT GOP IN CONTROL OF TEXAS LEGISLATURE

With the sweep of the elections in November, Republicans now have the majority in both the Texas House and Senate for the first time since the Reconstruction Period following the Civil War. In addition, Republicans swept all statewide offices including the Governorship and the Attorney General's position.

In the Senate, Republicans have had a slim majority for the last few years. With this election, Republicans went from a 16 to 15 majority to a 19 to 12 majority. In the 150 member House, Republicans now hold 88 seats with the Democrats holding 62.

In addition the leaders of each Chamber will be Republican. Land Commissioner David Dewhurst was elected Lt. Governor and will be the presiding officer of that body. As Lt. Governor, he will have the authority to appoint the Committees, their Chairman and control the flow of Legislation to the Floor.

In the House, the Members elect a leader amongst themselves. As of this writing, Representative Tom Craddick, a Republican Member from Midland, is the prohibitive favorite to be elected the Speaker and is expected to assume the post when the House convenes. He has over 100 pledges from his fellow House members. Representative Craddick has served in the House over 30 years and is the longest serving House Member, as well as the longest serving Republican.

With the new leadership and the changes in the composition of the two Chambers, there will likely be many changes. This is the first time

in over 30 years that both the Lt. Governor and the Speaker are new to their posts. There will likely be many new Chairmen, the composition of the Committees will be different and there may be new Committees and some current Committees will be restructured or eliminated.

These changes come at a time when Texas is facing some of its most formidable challenges in the last several years. There is a projected budget shortfall of at least \$5

Billion just to maintain the current level of services. Also our system of financing public education is in need of an overhaul. The so-called "Robin Hood" system is very

unpopular, but as of yet there has not been a plan developed to replace it. Higher

Education, our transportation system, the prison system, liability, insurance and health care issues will also have the attention of the Legislature this session.

Vast Majority of Texas Construction Association Endorsed Candidates Win

The TCA endorsed candidates in most of the contested Legislative races in the last election and won a vast majority of those races. In the Senate, 12 of the 13 candidates endorsed by the TCA won.

In the House contested races, 50 of the 53 House candidates

endorsed won.

In the Lt. Governor's race, the TCA endorsed candidate John Sharp lost to David Dewhurst. In this race, TCA had plenty of company as a majority of the business groups and other groups also endorsed Sharp over Dewhurst.

For a complete rundown of the election results, go to the Secretary of State's home page at www.sos.state.tx.us and look for the link to the 2002 General Election Results.

Thanks To Hosts And Attendees At Legislative Receptions

"ALL POLITICS IS LOCAL."

During the last election cycle, 18 subcontractors or suppliers hosted fundraising receptions in their homes for Legislators or candidates. Numerous others helped in the effort by taking the time to attend and contribute. In addition, subcontractors and suppliers

helped on other events by being on host lists, raising funds and meeting with candidates and Legislators.

Harold Freeman, Government Relations Director of TCA, said,

"The best way to get to know a Legislator is by simply meeting them. And the best way to get to know them better is by inviting them to your home and raising money for them." Several subcontractors and suppliers did just that. Many new friendships

were made and current friendships were strengthened this past election year. TCA-PAC sends its thanks to the following subcontractors and suppliers for hosting receptions:



Charlie and Dana Koerth,
Sen. Chris Harris



Sen. Kim Brimer, Janna Brimer,
Carol and Gene Morgan



Wilbur and Heidi Davis,
Sen. Frank Madla



Carolyn Lightfoot, Sen. Jon
Lindsay, Bob Lightfoot