



Winter 2013

REPRESENTING TEXAS SUBCONTRACTORS AND SUPPLIERS

## 2013 Texas Legislature Begins

*The 83rd Texas Legislature convened on January 8, 2013. TCA staff and members are continuing discussions that have taken place over the last 1-1/2 years to acquaint legislators with subcontractor and supplier issues and to seek their support of TCA's legislative agenda. In addition, over that same time period, TCA staff and members have participated in numerous meetings with groups both supporting and opposing the TCA initiatives that are now being brought before the Legislature. As in 2011, our agenda is ambitious, but the issues are important for all TCA member businesses and their employees. The following is a summary of the priority legislation set by the TCA board.*

**Consolidated Insurance Programs.** Consolidated insurance programs (CIPs) are insurance programs in which a principal, usually an owner or general contractor, provides insurance coverages that are bundled into one insurance program for a single construction project or multiple construction projects. They are also known as WRAPS, OCIPS, CCIPS, ROCIPS. The program typically provides coverage for each entity on the project, from the general contractor to the subcontractors and their employees, for general liability, workers' compensation, and builder's risk. When coverage on a construction project is provided through a CIP, savings are achieved through an economy of scale, and the general contractors and subcontractors are expected or required to lower their bids for the project to reflect the insurance costs they would have included in their bids had they provided insurance coverage for their

work. In many cases where construction projects are covered by CIPs, subcontractors do not have an opportunity to examine the policy or learn the extent of coverage provided by the CIP prior to bidding or beginning work on a project. Because of this lack of notice, a contractor and subcontractor



do not have enough information to allow them to predict accurately the credits, deductibles, and other costs that may be assessed to them. Construction bidding specifications for a construction project that may be covered by a CIP should provide notice that the project may be covered by a CIP and provide sufficient details for a bidder to be able to calculate insurance costs. In addition, prior to the execution of a construction contract under a CIP, the persons entering into the contract should be provided written disclosures, which would include the scope of coverage and limits for each policy under the CIP. TCA is working with the Texas Department of Insurance as well as the Texas Legislature to have the notice requirements for CIPs put into law.

**Lender Notice to Contractors.** There is no law in Texas that requires a lender on a construction project to give any notice to subcontractors and prime contractors when a lender determines that it will cease or suspend funding a construction financing agreement. If prime contractors and subcontractors are not made aware of the decision of a lender to no longer fund a construction loan, they will continue to work on a project, and may never receive payment for that labor and materials provided subsequent to the lender's decision to no longer fund the project. In 2011, a lender notice bill was filed but the legislation did not pass. In 2013, TCA is seeking the passage of a lender notice bill that will require lenders by law to give notice to contractors, who in turn would give notice to subcontractors that the lender has determined that it will no longer disperse funds that are part of the loan for the construction project. The law would allow the contractor and subcontractors the opportunity to stop working on a project when this notice is given. **The lender should not**

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## Message from the President

It is February and the 83<sup>rd</sup> session of the Texas Legislature is well into its second month. With House and Senate committee appointments now assigned, TCA's lobby team is moving quickly to finalize bill sponsors and get our remaining priority bills filed. This issue provides information about each of these bills, as well as other legislation that affects the construction industry. You will also find important information about how you can make a difference by contacting your legislators on bills that impact your business.

Over 100 of your fellow members and colleagues spent a day in Austin educating lawmakers on TCA's priority issues during TCA's 2013 Walk on the Capitol and TCA PAC Roundup. Thank you to all of the participants, sponsors, TCA PAC donors, and member association executive directors who came together to make the day a great success.

Following the Walk and Roundup, the TCA Board held its winter meeting in Austin. Welcome to those members who joined the Board in 2012: Gil Heldenfels, representing the Precast Concrete Manufacturers Association; Tim Riley, representing Dallas/Fort Worth Drywall and Acoustical Contractors Association; and David Stone, representing the Fire Sprinkler Contractors Association of Texas.

*Raymond*



Is **this** your health  
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## Get more through your TCA member program

The Texas Construction Association has joined forces with Humana to offer a multi-faceted health care program at discounted rates to its members. Higginbotham Insurance Agency has Texas statewide offices providing sales and service for this exclusive program.

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## 2013 Legislative Issues Continued...

***be enriched at the expense of the people furnishing labor and materials to improve the property.***

**Lien Law Reform.** The original intent of the lien laws as contained in the Texas Constitution was to provide a remedy for mechanics, materialmen and artisans to secure payment for labor, materials, or machinery furnished in the improvement of property. Over time, through amendments to the lien laws, the intent of the lien laws has been lost. Today, if the numerous notice and filing requirements in the lien laws are not followed as they are written they will trip up subcontractors and suppliers, resulting in the loss of certain lien rights available to them. Many times the reason for subcontractors and suppliers not timely perfecting their liens is that the current complexity of the lien laws is confusing. The statutory requirements confound most attorneys. The lay person has no chance. TCA is seeking passage of legislation that would revise the Texas lien laws so that the processes for subcontractors and suppliers to perfect their lien rights is easier to understand and is straightforward. The result would be that compliance with the law would no longer be a stumbling block for subcontractors and suppliers to protect their rights.

**Retainage Trust Fund.** Texas law requires non-public property owners to withhold 10% of the value of the work under a construction contract until completion of the work. This 10% is called retainage. In situations where a lender is providing construction financing, typically the lender only funds a loan amount for 90% of the value of the work each month and does not fund the remaining 10% until the project is finished. When a loan default occurs, the 10% not funded by the lender does not get paid to the construction team. If the owner of a construction project funds construction with a loan from a lender and the 10% retainage is not transferred to the owner each time the lender advances loan proceeds or the owner does not otherwise set aside the 10%, then contractors, subcontractors and others entitled to the retainage often do not get paid if the owner defaults on the construction loan. TCA is seeking

passage of legislation that would require the owner to set aside in a separate trust account the retainage amount not paid each month to contractors and subcontractors for construction costs during the life of a project to ensure that those contractors and subcontractors will be paid the retainage to which they are entitled. This trust account can be a simple bank checking or savings account and does not require a lawyer-prepared trust agreement.



**Worker Classification.** Misclassification of employees as independent contractors, also known as workplace fraud, is widespread in the construction industry in Texas. In one major metropolitan area of the state, an estimated \$9 million in revenue is lost as a result of unpaid state unemployment insurance taxes and federal taxes due to construction workers being misclassified by their employers. Employers who misclassify their workers have a competitive advantage in bidding for jobs and divert work from employers who do pay taxes,

overtime and workers' compensation premiums for their workers. In addition, the consequences for those employers violating the law are not strong enough to deter them from continuing their practice of misclassifying their workers. TCA is seeking passage of legislation that will set forth distinct and clear criteria that defines what constitutes an independent contractor in the construction industry. Punitive penalties will be part of this legislation and they will be severe enough that when they are levied against bad actors they will carry significant financial consequences. However, the law should allow those who use independent contractors legitimately to continue to do so with minimal, if any, disruption.

### Other Significant Construction-Related Issues

**State Breach of Contract.** Under current law, state agencies are immune from lawsuits brought by private citizens for claims they may have arising out of written contracts. Legislation has been filed that would remove the state's sovereign immunity on breach of contract claims in excess of \$250,000.

**Public School Background Checks.** Under the current practice, the majority of school districts in Texas each require separate background checks for workers on construction projects on school grounds. This practice increases school construction costs. Legislation will be filed that would allow for a statewide background check that could be used on all public school projects in Texas.

**Career and Technical Education Programs.** With the aging of skilled workers in the construction industry, the Texas public schools need to establish career and technical education programs to train and prepare students for various certifications in the different segments of the industry. A realistic, funded, and school district promoted program should be available for students who are not college bound. TCA is working with a coalition of associations and businesses in Texas for the passage of legislation that will address this issue. ★

# The Texas Legislative Process 101 - A Primer on the Texas Legislature

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

## The Legislature

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

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

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

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

Both the House and the Senate may enact, amend, and repeal laws and resolutions, submit all constitutional amendments to the voters, and approve the state budget. Each house judges the election and qualification of its members, elects its own officers (with the exception of the Lt. Governor in the Senate), and sets

and enforces its own rules. These rules govern the organization, procedures, and membership for both the House and Senate and originate in the State Constitution, the statutes, and the standing rules of the House and Senate. The rules may be suspended by the majority in each house. Both houses are required to have a two-third's majority to conduct business.

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

## Bills

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

## Committees

Because of the volume of work and the time limits of Sessions, both chambers work from a committee system to ensure thoughtful consideration of proposed bills. Bills cannot be considered on the House or Senate floor prior to a committee report on the bill. Therefore, the passage of a bill hinges on the committee decision.

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

detailed analysis of the bill, a fiscal statement, and other necessary attachments.

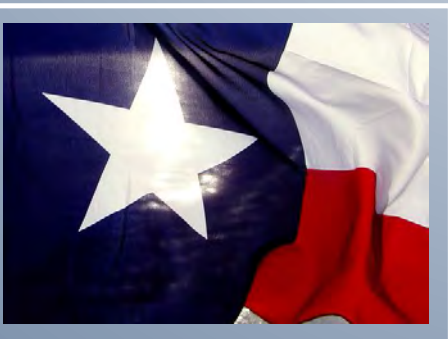
## On the Floor

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

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

If a bill is passed after the third reading by a simple majority vote, the bill is certified for final passage. The bill is engrossed, if in the originating chamber, and sent to the opposite chamber. After the bill has passed three readings in the opposite chamber, it is returned to the original chamber. If there are no amendments to the bill, it is enrolled. Both the Speaker and the Lieutenant Governor sign the bill and it is sent to the Governor. If the bill is returned to the originating chamber with amendments, that chamber must agree to all of the amendments before it can be enrolled. If it does not agree to all of the amendments, then a Conference Committee is created to work out the differences in the two versions of the bill.

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



# Build a Relationship with Your Legislators - *Make Sure Your Voice is Heard!*

**Grassroots legislative advocacy is the most important work that members of an association can do to promote the passage of or the defeat of legislative initiatives that affect their day-to-day lives and their businesses. Constituent input is the most pure form of advocacy that exists in the political process. When a grassroots advocacy program is embraced and carried out by members of an association, the success of that association's legislative agenda is more likely to be realized.**

First and foremost, when you meet with your Senator or Representative it will be like a marketing meeting with another business person. The other person in the meeting just happens to be a legislator and you happen to be a constituent who lives or works in his or her legislative district.

## Overview

- The purpose of meeting with your legislator is to build or renew a relationship with him or her so that you can easily contact that member when issues important to you are being considered by the Texas Legislature.
- While your item of concern may be on the TCA legislative agenda, your mission for your meeting is to convey to your legislator what issue or issues you are passionate about and most affect you and your business.
- Remember that you and your business are important to your legislator-***your legislator works for you, not the other way around.*** Yet, you want to assist in every way to help the legislator be successful.
- Your meeting with your legislator is about you and your interests, not TCA's legislative agenda.
- Talking about your issue or issues and not the list of your association's legislative agenda issues will help you to relax and speak from your heart without memorizing a lot of information.
- Connect your issue to personal experience. If possible, talk about others who have been harmed by situations that have arisen related to this issue. ***Connect this as a jobs issue. It costs you money.***
- Prior to your meeting, familiarize yourself with TCA's legislative agenda in case your legislator asks you questions about any of those bills.

## The Basics of Setting Up a Meeting With Your Legislator

- Call the senator's or representative's district office or his or her legislative office in Austin and ask to schedule an appointment.
- If you are travelling to Austin during the legislative session, tell the staff person in your legislator's office when you will be in town and ask to schedule a meeting.
- If you want to meet with your legislator in his or her legislative district, call the legislator's district office and ask to meet

with your legislator at his or her earliest convenience.

- Identify yourself as a constituent – either because of where you reside or where your business is located (or both).
- Tell the legislator's staff person that you only need 15-30 minutes of your legislator's time.
- If you are seeking to meet with your legislator in his or her district office, ask the staff person what would be the easiest way for the legislator to meet with you: at the district office, for breakfast, for coffee or for lunch.
- The staff person you are talking to may ask if it would be all right for you to meet with a legislative staff person instead of the legislator.
- Say you would prefer to set an appointment with the legislator and will do so at a time that is convenient for him or her.
- In the end, you may only be able to set an



**TCA Members making a difference!  
TCA Walk on the Capitol 2013**

appointment with a staff member.

- If that occurs, make sure you tell the person in the office you are talking to that you will meet with the staff person, but would like a meeting with the legislator in the future by saying, "She (or he) is my senator (or representative) and I'd really like to share my concerns directly with her (or him), too."

## Preparing to Meet With Your Legislator

- Remember that this will be YOUR meeting with your legislator, whether you're in Austin or in the legislator's district.

- Write down the points you want to make in your meeting and review them prior to the meeting.
- Go online at [www.house.state.tx.us](http://www.house.state.tx.us) and click on "Members" or at [www.senate.state.tx.us](http://www.senate.state.tx.us) and click on "Senators". Click on your legislator and familiarize yourself with your legislator and his or her background.
- Review the TCA Legislative Agenda to be familiar with the issues.
- Call the legislator's district office or, if you are coming to Austin, his or her Capitol office a day or two prior to the meeting to confirm the day, the time and the place for the meeting.

## Meeting With Your Legislator

- Be on time for your meeting.
- Address your legislator as Senator \_\_\_ or Representative \_\_\_, unless he or she asks you to use his or her first name.
- You may be told the meeting will be for 15 or 30 minutes.
- A legislator's staffer may join the meeting.
- Introduce yourself and tell the legislator about you, where you live, where your business is located and how many people your business employs.
- Let the member get to know who you are.
- Usually your legislator will ask you what you want to talk about or what they can do for you.
- Thank your legislator for asking and begin talking about your issue. Tell him or her you have a problem related to this issue and ask your legislator if they can help you.
- Don't be long-winded. Make your "pitch" as succinctly as possible.
- Be prepared for questions during your "pitch."
- If you don't know the answer to a question your legislator or the staff person asks, there is nothing wrong with saying, "I don't know, but I'll find the answer and get back to you."
- You may want to invite your legislator to visit your business.

*Continued on next page...*

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## Annual TCA★PAC Clay Shoot

Monday, August 5, 2013  
Greater Houston Gun Club  
Houston, Texas



### 2013 Legislative Primer Continued...

does not reach agreement or if both chambers do not agree on the conference report, the bill is dead.

#### Into Law

The Governor has 10 days to sign, veto, or pass the bill without signature. If the bill is vetoed while still in session, the bill is returned to the originating chamber with the Governor's reasons attached. That chamber can override the Governor's veto with a two-thirds majority vote in each house. The Governor has 20 days after the last day of the session to take action on a bill that passes during the last 10 days of the session.

#### Example

In 2011, the House passed a consolidated insurance program bill and sent it to the Senate. In the Senate, when the bill came to the Senate floor for consideration, the bill was amended with indemnification language, passed by that chamber, and sent back to the House for that chamber's consideration of the House bill as amended in the Senate. The House did not agree to the indemnification amendments added to the bill in Senate. The bill was then sent to a Conference Committee, where differences in the House and Senate versions were worked out. In the end, both the House and Senate accepted the Conference Committee report on the amended bill containing the indemnification language. The bill was then enrolled and sent to the Governor, who signed it into law. ★

For more information, please visit the Texas Legislature Online website at [www.capitol.state.tx.us](http://www.capitol.state.tx.us)

### Building Legislative Relationships Continued...

- At the conclusion of the meeting, thank your legislator for taking the time to meet with you to talk about an issue that is important to you.
- Leave your contact information with your legislator's staff.
- Send a thank you note after the meeting and send any information that you were requested to send.

#### Communicating With Your Legislator on Specific Legislation

- If you have met with your legislator prior to or during a legislative session, that relationship you have started will be an asset to you when you need to communicate with him or her during the session about legislation that is important to you and your business.
- Even if you have never met with your legislator, you can still make your voice heard on legislation that is important to you and your business.
- During a legislative session, TCA staff will send alerts to you from time to time to encourage you to contact your legislators to

let them know where you stand on a specific bill they are considering.

- TCA staff presently has the capability to communicate to specific groups of TCA members living and working in each House and Senate legislative district to inform them about an important vote coming up in a committee or on the floor of the House or Senate and to tell them that they need to contact their legislator right away.

**Timing is of the essence! We need to be able to contact you at strategic times during the 2013 legislative session. In order to accurately determine which legislators represent you, we need your home and work addresses. Please email your home and work addresses to Mike White, Vice President for Governmental Affairs for TCA at [mwhite@texcon.org](mailto:mwhite@texcon.org) as soon as possible. Your contact information will not be shared with anyone else. ★**

**YOU CAN MAKE A DIFFERENCE!  
MAKE SURE YOUR VOICE IS HEARD!**



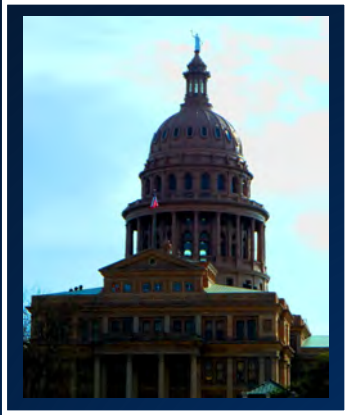
After meetings at the Capitol, TCA PAC contributors relax at the Roundup



Representative Drew Springer with TCA members at the TCA PAC Roundup

# 2013 Walk on the Capitol & TCA PAC Roundup

## TCA Members Making an *Impact*



TCA members from around the state gathered in Austin on Tuesday, January 29 for TCA's 2013 Walk on the Capitol & TCA PAC Roundup. After a luncheon and briefing on key legislative issues, Walk participants headed to the Capitol for an afternoon of meetings with legislators and their staff. The day's events gave members an important opportunity to discuss TCA's legislative agenda and other issues of significance to the construction industry with their state senators and representatives. In all, 83 legislators' offices were visited. These visits certainly made a positive impact on TCA's legislative agenda.

with friends from other cities and made new connections with other colleagues. They continued conversations with legislators begun at the Capitol earlier in the day. A number of freshman legislators attended and became more familiar with TCA members and our issues.

Thank you to all of the participants who made the Walk and Roundup a great success. A special thank you to our member association executive directors for setting up meetings with legislators, organizing transportation to the event, and spreading the word about this important day.

Legislators and Capitol staffers joined TCA members at the evening Roundup, which provided everyone an opportunity to network in a fun, relaxed atmosphere. Senator Bobby "Sticks" Deuell played drums with the band, Philip Marshall's ESTUARY. Members caught up

We were happy to hear that 97% of participants who responded to a post-event survey said they believed the Walk and Roundup were a good use of their time and that they would attend another TCA Walk in the future. We look forward to seeing you at the next Walk & Roundup in January 2015! ★

## Thanks to Our Sponsors!

*Underwriter*

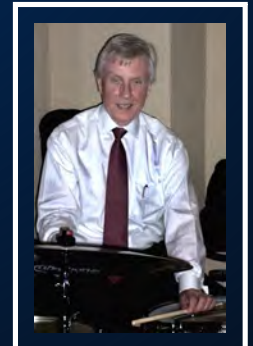
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