



2015 AGC- Texas Building Branch Legislative Issues

1. **Breach of contract (sovereign immunity) HB 1124 by Workman** - Issues that remain to be addressed are: recovery of attorneys' fees without contractual provision, non-road TxDOT projects, oral directives vs. written change orders, and recovery of attorneys' fees in smaller cases (i.e., claims less than \$250,000) that must go through the State Office of Administrative Hearings (SOAH), instead of state district court.
2. **Higher ed construction funding** - AGC-TBB will actively and prominently support the higher ed community's legislative plan for funding their building construction needs. Currently, that plan will include ~\$2-3 billion of tuition revenue bonds (TRBs) as well as a ~\$1.3 billion upward adjustment for the Higher Education Fund (HEF), which is up for its five-year recalibration. [Campuses other than the UT System campuses, A&M College Station campus, and Prairie View campus get their funding from the HEF.]
3. **Statute of repose** - Currently at 10 years (+ 2 years for discoverability) in Texas, legislation will attempt to reduce the time period of exposure. May be done in coordination with other civil justice groups (TLR, TCJL).
4. **Texas Assn of School Boards' (TASB) construction management** - TASB has waded into the construction management business, particularly in the smaller, rural ISDs. Legislation may be needed to close any loopholes in state procurement laws for constructing school buildings.
5. **School background checks** - AGC-TBB is working with the Texas Association of School Boards (TASB) and the Texas Education Agency (TEA) to create uniformity, predictability, and portability among the school districts for background checks of construction workers on public school projects. Background checks are a tricky area of the law, as both federal and state laws (as well as the technology available) are constantly changing. Complicating the issue are federal and state protections about privacy and confidentiality. Currently, Texas school districts vary widely on how they enforce these requirements.
6. **Lender notice of default (HB 1208 by Bell)** - Would require lender to notify GC when owner defaults on loan, so GCs and subs can stop work sooner than under current law. Currently, an incentive exists for the lender to not notify contractors of default. Progress was made on the notice trigger. Work remains on the mechanics of the notice and the consequences of failing to notify.
7. **Construction trust funds retainage (To be Filed)** - Would require all retainage withheld by the Owner from the GC to be deposited and held in a trust account, to the extent the funding came from loan proceeds. The Contractor and perfected lien claimants would have a priority (even over the lender) to those trust funds. This would correct the situation where a lender takes over a project from a defaulted borrower/owner and forecloses on the project, wiping out the Contractor's lien rights. Currently, the lender has no obligation to turn over the retainage to the Contractor.

- 8. Economic Development Corporations (EDCs) procurement (HB 208 by Leach)** - Attempt to close loophole: EDC procurement is essentially unregulated. Would apply same procurement laws to EDCs that apply to other governmental entities.
- 9. P3 changes** – Several issues have arisen over the passage of the 2011 Session’s P3 bill—Senate Bill 1048. These include confidentiality concerns, moratorium on Capitol complex development in Austin, turnaround speed on approving projects, and getting local entities the expertise to do P3s. The House Economic & Small Business Development Committee held an interim hearing on P3s on April 10. Most of the testimony addressed local governmental entities’ lack of in-house expertise or personnel to analyze and evaluate P3s projects, and ideas for how to assemble that expertise and make it available.
- 10. Construction issues that are holdover items**
- Mandatory workers comp – strongly opposed by several industries and by non-subscribers. Construction industry and associations are divided on the issue.
 - Mandatory rest breaks – WDP bill
 - Mandatory 10-hour OSHA – WDP bill.
 - Statute of limitations for prevailing wage rate claims
 - CM at Risk – battle between two hard-to-reconcile positions
 - Co-operative purchasing – ban/limit use for construction services
 - Immigration – make sure any state law changes are clear, fair, and predictable