

Texas Construction Association

REPRESENTING TEXAS SUBCONTRACTORS AND SUPPLIERS

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Texas Legislative News – May 25, 2007

Legislative Session Winds Down to Last Weekend. The Legislature is set to adjourn on Monday, May 28. Wednesday, May 23, was the last day either the Senate or the House could pass bills out of their respective Chambers. The last few days of the Session are committed to resolving differences in bills that have passed both the House and Senate. One option is for one Chamber to concur in the changes made to legislation by the other Chamber. If this occurs, the legislation then goes to the Governor. Another option is to refuse to concur in the amendments and have a conference committee appointed. The conference committee is composed of 5 Senators and 5 House Members for each bill. The conference committee meets to resolve the differences. If at least 3 members on each side agree on language, a conference committee report is sent back to each chamber for them to vote to accept or reject the conference committee report. If both chambers vote to accept the conference committee report, the legislation then goes to the Governor. If either Chamber or both reject the conference committee report and one is not produced that is acceptable to both Chambers, the legislation dies.

Contingent Payment Bill. The Senate concurred on Monday, May 21 on the one technical amendment the House placed on **SB 324**, the Contingent Payment bill. On Wednesday, the legislation was formally sent to the Governor. For bills sent to the Governor in the last 10 days of the Session, the Governor has until June 17th to veto.

Consolidated Insurance Program. As mentioned in last week's newsletter, the Consolidated Insurance Program legislation failed to be considered on the Senate floor. However, much progress had been made on the legislation with the primary opponents and TCA reaching a tentative agreement on the key issues in the legislation. This should form the basis for further meetings with the stakeholders during the interim to work on comprehensive legislation.

Indemnification. The Senate version of the indemnification bill, **SB 346**, stalled in the House Civil Practices Committee and it is now too late for passage. While not being interested in pyrrhic victories or leading at halftime, the fact that the bill passed the Senate showed substantial progress on an issue that the legislature needs to address. The Senate made a statement by passing the measure and the challenge now is to educate the House about the importance of banning oppressive indemnification clauses which allow a person to avoid responsibility for his or her actions.

Attorney Fees in Dispute with Public Entity. HB 1268 has passed the Legislature and has been sent to the Governor. This measure levels the playing field regarding the ability of the prevailing party to recover attorney's fees in a lawsuit involving construction disputes with a public entity. Many public entities were including in their contracts provisions allowing the entity to recover attorney's fees if the public entity prevailed in a dispute. There was usually no provision in the contract to allow the contractor or subcontractor to recover attorney fees if the contractor or subcontractor prevailed. This bill provides that a contractual clause allowing the prevailing party to recover attorney fees is effective only if it is not one-sided. It must allow for whichever party prevails to recover attorney fees.

Franchise Tax. HB 3928, the new franchise tax clean-up bill is presently in a conference committee. The House refused to concur in Senate amendments and a conference committee was reported. It is anticipated that the conference committee will reach an agreement. There likely will be only minor changes to the tax except for the raising of the minimum gross revenue level exempting small business from the tax. The House and the Senate took a different approach in raising the minimum gross revenue before a business would be subject to the tax. The Senate also scrapped a provision it had proposed which would have provided for an alternative franchise tax based upon gross revenues.

Consolidation of the public works procurement statutes into a single statute is the main purpose of **HB447**. The bill also has a provision that dictates how proceeds from a **defect design or construction** claim on a school shall be used. The bill is now in a conference committee and the prospects look good for the conference committee to reach an agreement. The bill contains a provision that will ban **Reverse Auctions** as a procurement method for construction services on public projects.

Condominiums. HB3147 will head to the governor soon. This bill brings the common elements of a condominium project under the purview of the Residential Construction Liability Act.

More Issues. There are other construction issues that the Legislature passed or killed this session. Some of these issues involve prompt pay, mechanic's liens, trade licensing, dispute resolution, and the residential construction commission. TCA will continue to monitor as the last bills pass or die and as the governor decides to sign or veto legislation. Watch for the regular TCA newsletter for a more comprehensive discussion of construction related issues in the 80th Legislature.

More Information on the TCA Website. If you want to look at the TCA bills that have been filed, find out who represents you or want to know more about TCA, our website address is www.texcon.org. If you have specific questions, you can call TCA at 512-473-3773.