

# Texas Construction Association

REPRESENTING TEXAS SUBCONTRACTORS AND SUPPLIERS

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## Subcontractor and Supplier Construction Newsletter - September 2008

**5<sup>th</sup> Circuit Court Rules in Favor of Subcontractors.** The United States 5<sup>th</sup> Circuit Court of Appeals recently released an opinion in *Lowe v. Palmetco, Inc.* In this case, a contractor owed a supplier/subcontractor money for some construction projects. The contractor paid the supplier/contractor in October, but filed Chapter 7 bankruptcy in December. The Trustee in the bankruptcy case filed an instant proceeding against the supplier/subcontractor to recover the money paid to the supplier/subcontractor.

The Court ruled that the supplier/contractor would have received the payment it was owed under the construction trust fund theory, and thus the supplier/subcontractor would have been paid in full. Therefore, the court held, the supplier/subcontractor did not have to return the funds.

This case is important to our industry because it establishes that if you are an intended beneficiary under the Texas Construction Trust Fund Act, and receive a payment from a trustee under the act who later declares bankruptcy, that payment does not constitute a preference that must be returned to the bankruptcy estate.

### **Attorney General Abbott to Issue Opinion Regarding Employing Illegal Immigrants.**

Representative Frank Corte, R-San Antonio, and Senator Dan Patrick, R-Houston, asked Attorney General Abbott to decide whether it is constitutional for the state to suspend or revoke the licenses of businesses that employ illegal immigrants.

The legislators specifically asked “[i]f Texas legislation (1) provided for the suspension or revocation of the business licensure of employers of unauthorized aliens; (2) relied solely upon a federal determination of immigration status; and (3) did not impose civil or criminal sanctions, would the law be permissible under the U.S. Constitution?”

Numerous attempts to pass immigration legislation in the 2007 legislative session died. It is expected that immigration legislation will again be filed in 2009. Attorney General Abbott’s decision is due early February.

**Staff Recommends Abolishing the Texas Residential Construction Commission.** The staff of the Texas Sunset Advisory Commission has recommended to the Sunset Advisory Commission that the Texas Residential Construction Commission (TRCC) be abolished. The Texas Residential Construction Commission was created during the 2003 legislative session to help resolve disputes between homeowners and homebuilders. The purpose of the state agency is to help resolve such disputes before they enter the judicial system.

The Sunset Commission staff reported that the agency was doing “more harm to homeowners than good.” The agency staff contended that the agency is “fundamentally

flawed” in that six of the nine Commission seats are reserved for members of the homebuilding community.

Duane Waddill, TRCC’s executive director, argues that the TRCC provides a valuable service to the state and helps prevent unnecessary litigation. He stresses that TRCC should not be abolished.

The Texas Sunset Advisory Commission is the state agency in charge of eliminating waste and inefficiency in other state agencies. Comprised of four State Senators, four State Representatives, and two Public Members, the Sunset Commission will decide this fall whether to accept the staff recommendation concerning abolishing the agency. The Commission will then make a recommendation in a report to the Legislature for action during the 2009 Legislative Session. As required of all state agencies under “sunset” review, legislation must be passed in the next legislative session to continue an agency’s existence.

**Special Election Set for November 4<sup>th</sup>.** Governor Perry set the special election for House District 55 to be held on November 4, 2008, General Election day. The seat was left vacant by the resignation of Rep. Dianne Delisi, R-Temple.

Early voting for this special election begins Oct. 20 and ends Oct. 31, 2008. The winner of this special election will serve out the remainder of Rep. Delisi’s term, which expires in January 2009.

Ralph Sheffield (Republican), Sam Murphey (Democrat), and Chris Lane (Libertarian) are on the ballot to replace Rep. Delisi in the November General Election.

**TCA Career Center Online.** The Texas Construction Association’s newly created TCA Career Center now provides a way for its members to post jobs and search resumes easily. Unlike most other Job Boards, the TCA Career Center is construction industry specific which gives job seekers one centralized location to search for employment. Please visit <http://jobs.texcon.org> for more information on the TCA Career Center.

For a short time, TCA members can enjoy introductory rates for each of these job posting packages:

Single 30-day Online Job Posting Package	Introductory offer to Members \$100
Three 30-day Online Job Posting Package	Introductory offer to Members \$270
Five 30-day Online Job Posting Package	Introductory offer to Members \$400
Ten 30-day Online Job Posting Package	Introductory offer to Members \$760

**Reserve Your Room for the TCA 2009 Walk On The Capitol And Round Up.** The TCA Walk on the Capitol and Round Up has been set for January 26<sup>th</sup> and 27<sup>th</sup>. Hotel rooms are available in the TCA room block for the special rate of \$189 for a suite room and \$269 for a two bedroom suite. Reservations may be made by contacting the Doubletree at 512-478-7000 or online at the TCA website ([www.texcon.org](http://www.texcon.org)) by clicking the button entitled Events and then the link entitled Doubletree Guest Suites Austin.