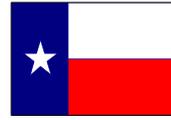


# Texas Construction Association

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## Texas Legislative Update

The 84th session of the Texas Legislature ended June 1, 2015.

Some of the statistics from the just completed session are as follows:

- House members filed 4,207 bills in 2015 compared to 3,950 bills filed in 2013, with 818 House bills being passed in 2015 compared to 732 bills passed in 2013.
- Senators filed 2,069 bills in 2015 compared to 1,918 filed in 2013, with 504 bills passed this year compared to 705 bills passed in 2013.

The below construction related bills passed the legislature. Information on all bills can be obtained at [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

### **Consolidated Insurance Programs- signed by the governor**

**SB 1081** provides that the Consolidated Insurance Program principal must furnish crucial information about the CIP prior to a contractor entering into a construction contract. It also requires the principal to furnish promptly a copy of the insurance policies under the CIP.

### **Public-Private Partnerships- signed by the Governor**

**HB 2475** will establish a center for alternative finance and procurement within the Texas Facilities Commission to consult with governmental entities regarding best practices for procurement and financing of qualifying public-private partnership projects and to assist governmental entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and management of qualifying public-private partnership projects.

### **Pre-Litigation Requirements for Condo Owners' Associations in Defect Cases- signed by the Governor**

**HB 1455** will restrict condominium unit owners' associations in condominiums that have eight or more units from filing lawsuits or initiating arbitration proceedings to resolve a claim relating to the construction or design of a unit on behalf of all of the owners unless they obtain an inspection and written independent third-party report that identifies and describes the condition of the specific units or common elements that are subject to the claim and obtain approval from unit owners holding at least 67 percent of the total votes in the association at a special meeting.

### **Construction Manager-At-Risk Used by a Governmental Entity- signed by the Governor**

**HB 2634** amends the Government Code to remove an exception to a prohibition against a governmental entity's project architect or engineer serving, alone or in combination with another person, as the construction manager-at-risk. The bill will promote competition in the construction industry.

### **Higher Education Tuition Revenue Bonds- signed by the Governor**

**HB 100** provides authorization for certain higher education institutions across the state to issue \$3.1 billion in revenue bonds to fund 64 construction projects over the next two years.

### **Deferred Maintenance of State Buildings- signed by the Governor**

**SB 2004** creates a "deferred maintenance fund" to be funded by the Legislature for the purpose of repairing state buildings. Creates an oversight committee composed of six legislators.

### **State Contracting- signed by the Governor**

**SB 20** is a state contracting bill to tighten and strengthen oversight on contracts with state government agencies by increasing oversight of large state contracts awarded to private companies and adding more reporting requirements.

### **Franchise Tax Cut- signed by the Governor**

While not just for the construction industry, **HB 32** reduces the franchise-tax rate by 25 percent for all businesses, allows businesses with annual revenues under \$20 million to use the 'E-Z Computation' method and lowers E-Z rate.

## Education Issues

In 2013, the Texas legislature redesigned the public school educational system to provide a better pathway to construction industry careers beginning in high school. This session, there were a large number of education bills. Below are some of those that passed that dealt with career and technical education/training.

### **HB 18- signed by the Governor**

**HB 18** is the combined bill that establishes college and career readiness training academies for counselors in public schools: middle, junior high and high schools. This bill includes SB 13, a measure that lifts the cap on dual credit courses a student can take in all Texas high schools, not just early college high schools as in current law. It also adds a 7th or 8th grade semester course on career and college readiness to explore graduation plans, endorsements, and college and career choices (all students must pick an endorsement upon entering 9th grade).

### **HB 3062- signed by the Governor**

The Jobs and Education for Texans (JET) Grant Program, enables educators to create courses that meet the needs of employers in their region, quickly and efficiently. The bill continues the program at the Texas Workforce Commission, unchanged from its current mission and at funding levels of \$5 million annually. It allows ISDs to access the fund when tied to higher education dual credit.

### **HB 505- signed by the Governor**

Removes the dual credit caps at traditional high schools.

### **HB 2205- signed by the Governor**

Would allow superintendents, with school board approval, to hire CTE teachers without teacher certification on a School District Teaching Permit with proper classroom management training.

### **HB 2014- signed by the Governor**

Allows military personnel to obtain certification to teach career and technology education (CTE) classes in public schools, even if they have no specific occupational licensure.

### **HB 2628- signed by the Governor**

Supports development and alignment of curricula for CTE educational programs by The Higher Education Coordinating Board.

### **SB 1189- signed by the Governor**

Establishes a transfer associate degree program at each public junior college.

## TCA Priority Issues That Did Not Pass

### **Lender Notice**

**HB 1208** would have required 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 have allowed the contractor and subcontractors the opportunity to stop working on a project when this notice is given. **The lender should not be enriched at the expense of the people furnishing labor and materials to improve the property.**

### **Retainage Trust Fund**

**HB 1966** would have required 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 could be a simple bank checking or savings account and does not require a lawyer-prepared trust agreement. In addition, the bill would have allowed the owner to purchase a retainage bond as an alternative to setting aside the retainage in a trust account.

### **Worker Classification**

**HB 434** would have set a penalty of \$100 per employee misclassified for the employer's first offense. If the employer would again be found to be in violation of the law, the Texas Workforce Commission could have fined an employer up to \$1,000 per employee.

## **Selected Other Construction-Related Legislation That Did Not Pass**

### **Waiver of Sovereign Immunity**

**HB 1124** would have further strengthened the changes made to the waiver of sovereign immunity for state breach of contract legislation passed in 2013.

### **Mandatory Workers' Compensation Coverage in the Construction Industry**

**HB 689** and **SB 155** would have established mandatory workers' compensation coverage for all building and construction contractors.

### **E-Verify for Government Contracts**

**HB 889** and **SB 401** would have required any contractor or subcontractor providing goods or services to a state agency to register with and participate in the E-verify program to verify employee information during the term of the contract with the agency.

### **Report from Comptroller on Misclassification in Texas**

**HB 1714** would have required the Comptroller of Public Accounts to prepare a report on the extent to which employers in Texas misclassify employees as independent contractors. The report would have included an analysis of the economic impact of misclassification on wages, unemployment insurance taxes and federal income and social security taxes. The analysis would have included information on the availability of health benefits, pension benefits, workers' compensation coverage and unemployment compensation benefits to a misclassified employee.

### **Decreasing Liability During the Statute of Repose**

**HB 1784** would have provided for a decreasing liability of 10 percent per year for defects in construction or repair of an improvement to real property.

### **Required Licensing of Construction Contractors in Texas**

**HB 3148** would have required all construction contractors in Texas to be licensed by the Texas Department of Licensing and Regulation.

### **Limiting Retainage on Public Works Projects to Five Percent**

**HB 3939** would have limited retainage on public works contracts to five percent without the consent of all parties to the contract and would have required that all retainage be deposited in an interest-bearing account for the benefit of the prime contractor. In addition, the retainage would not have exceeded one percent of the contract price if the public work covered by the contract was capable of being used for the intended purpose of the public work.