

What's Ahead for the Construction Industry in the 86h Texas Legislative Session

State Representative Jeff Leach

For 140 days, starting on Jan. 8, 2019, the 150 members of the Texas House of Representatives and 31 members of the Texas Senate, under the leadership of Governor Greg Abbott, will gather for the 86th Texas Legislative Session. As is often said, when the Texas Legislature is in session – your life, liberty and property are at stake – as new laws, rules, regulations, taxes and fees will be proposed and will receive substantive debate and deliberation before Texas legislators ultimately vote on your behalf.

Most legislators agree that the main issues driving the agenda for the session are public education (including school finance, school safety, workforce development and teacher pay) and property tax relief. Additionally, there is no question that the legislature will spend considerable time on what is sure to be a complicated and challenging state budget cycle. With school finance, healthcare, infrastructure funding and Hurricane Harvey recovery looming large on the horizon, this legislative session will present unique fiscal challenges – and also great opportunities – to ensure Texas remains strong and prosperous.

In terms of “construction” legislation, general contractors, subcontractors, suppliers, owners, developers, lenders and lawyers all have reason to pay particularly close attention as several important issues have seemed to gain the attention of Texas Legislators. To name a few:

- “Lien Law” Changes – there is broad consensus that the Texas lien laws need to be addressed. Some believe that Chapter 53 should simply be reformed in a piece-meal approach. Others believe the whole thing needs to be scrapped and re-worked completely. But there is no question that Texas Legislators are hearing from contractors, owners (and their lawyers) about the need for reform. Expect multiple bills to be filed and for this issue to gain more traction than it has in quite some time.
- Defective Plans & Specs – Governor Abbott vetoed legislation in 2017 that would have, among other things, established in law that contractors should not be liable for defective plans and specs that are furnished by the owner. Even so, there seems to be a groundswell of concern about recent Texas Supreme Court holdings that are unfairly forcing contractors to bear the burden for defective designs when, in fact, contractors are not even able to prepare and certify construction drawings. Despite the Governor’s previous veto, this issue is not going away and diligent efforts are ongoing to fix this problem.
- Retainage Reforms – There was a push in the previous legislative session to provide a contractor priority to a lien for retainage that would be equal to the priority to a lender’s deed of trust for the construction loan. This effort failed but conversations regarding the lack of protection for a construction team’s retainage are still simmering. Legislation will again be filed and considered in both the House and Senate.

In addition to these, the construction industry should expect to see substantial debate on other important issues including, but not limited to: statute of repose reforms, right to repair issues, recovery of attorney’s fees and possible franchise tax relief proposals. Of course there will also be

debate on hot-button issues like immigration, unions, mandatory minimum wage and paid sick leave.

As a great philosopher once said, “Just because you do not take an interest in politics doesn’t mean politics won’t take an interest in you.” Bottom line: the 86th legislative session could be one of great consequence for the construction industry. Thus, there’s never been a better time to get involved, make your voice heard, and ensure that your elected Representatives are doing everything possible to advocate on your behalf and to keep Texas strong and prosperous.

ABOUT THE AUTHOR

Jeff Leach is serving his fourth term in the Texas House of Representatives, representing House District 67, consisting of portions of Plano, Allen, Richardson and Dallas in Collin County. Since taking office in 2013, Jeff has served on the House Committee on Economic and Small Business Development, the House Committee on Criminal Jurisprudence, the House Committee on Government Transparency and Operations and the House Committee on Rules & Resolutions. He has also served as Vice Chairman of the House Committee on Urban Affairs. Additionally, Jeff was elected by his colleagues to serve on the Texas House Republican Caucus Policy Committee.

In addition, Jeff practices at the law firm of Gray Reed & McGraw in Dallas where he serves as outside general counsel for general contractors and various other construction clients, handling everything from litigation and transactions to employment issues, regulatory compliance and taxation. He also frequently steps outside of his core practice and lends a hand to the firm’s other clients in a variety of special projects, such as explaining the impact of new legislation and statutory and regulatory challenges on the horizon.