

CONSTRUCTION AND THE LAW IN TEXAS

Evaluating the 84th Legislature for the Construction Industry

The 2015 Texas Legislative session finished with a bang for the construction industry. Two significant spending bills and a number of budgetary items made it through the sausage grinder that is the legislative process. With their arrival on the governor's desk without the threat of veto, these bills will become law and will ensure that billions of dollars are dedicated to construction spending by state agencies and universities. This type of additional public support will bolster the industry in the next biennium.

While many bills saw their chances of success fade away in the waning days of the session due to contentious battles relating to the budget, tax cuts, and social issues, these construction spending bills survived the melee and made it to the governor's desk or the voter's booth for ultimate approval. These bills allocate more than \$8 billion to construction in three new laws—the Transportation Spending, College Spending, and Facilities Spending provisions contained in two bills and the state budget.

Transportation Funding

In my mid-session update, I wrote about the differences in funding mechanisms that had been passed by the House and Senate. Since that column, the House and Senate negotiated a final resolution to the immediate funding needs articulated by the Texas Department of Transportation (TxDOT) and industry groups. The result is going before voters in November's general election as a constitutional amendment seeking authorization to dedicate

specified funds to transportation and infrastructure spending.

The effect of the proposed amendment will be to dedicate \$2.5 billion of the state's general sales tax collections to the state highway fund beginning in 2017. Additionally, starting in 2019, a portion of motor vehicle sales taxes will be dedicated to the state highway fund. If the taxes collected from motor vehicle sales exceed \$5 billion, then 35 percent of that revenue will go directly into the state highway fund. Currently, Texans pay about \$4 billion in motor vehicle sales taxes. With our recent population growth and projections for growth in the future, expectations are that motor vehicle sales tax collections will grow beyond \$5 billion, triggering the 35 percent dedication.

Finally, the Legislature allocated \$2.5 billion in funds from the Rainy Day Fund for transportation funding pursuant to the authority granted by the voters when they approved Prop 1 last November. Additionally, the Legislature successfully ended diversions of gas tax money away from the highway fund. By taking this money away from the DPS, TxDOT will receive an additional \$1.3 billion in funds for construction.

The cumulative sum of the actions taken by the Legislature in 2015 has a potential effect of adding more than \$6 billion to TxDOT's available funds for planning and constructing improvements to our highway system.

The AGC of Texas and other interested groups are committed to working hard to pass the upcoming proposition to secure this additional funding. In 2014, 80 per-

cent of voters approved Prop 1 that authorized the use of Rainy Day Funds to help fund transportation projects. The efforts to pass Prop 1 were organized and shared by a number of different groups working in concert with one another. The successful model employed for Prop 1 will be used again for the upcoming campaign.

College Construction

The Legislature passed HB 100 and sent the bill to the governor. That bill authorizes \$3.1 billion in tuition revenue bonds to be spread across the state for improvements to existing facilities or construction of new facilities at Texas' universities. The Texas A&M system, the University of Texas system, the University of Houston system, the Texas State University system, the University of North Texas system, the Texas Woman's University system and others all have earmarked projects listed in the bill that allows each system to issue bonds generating revenue to be spent on various construction projects.

General Revenue Construction Spending

In addition to the bills aimed specifically at funding major construction programs, the Legislature included a number of significant projects in its budget for the next biennium. These projects add up to another \$2 billion in construction spending. Multiple state agencies or commissions will receive funding for improvements and deferred maintenance of existing facilities. The projects funded in the current budget are spread across the state and include new construction, renovation and maintenance projects.

Generally speaking, the 84th Legislature was relatively quiet with respect to construction industry news. Coming into the session, there was talk of a major rewrite of the lien laws. This effort never really got any traction. In the time between the end of the 83rd and start of the 84th sessions, a committee was formed to look into and discuss the lien law reform. The committee was unable to develop the framework of lien law reform and the effort was shelved until a later date. I suspect the effort will continue in the future and we'll see more momentum to reform the lien laws in the upcoming legislative sessions in 2017 and 2019.

With respect to procurement code revisions, the only significant bill that has made it to the governor's desk is one



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A Balanced Approach to Construction Law.

at-risk for local governmental entities. The new statute, if not vetoed, will make it unlawful for an entity selected as a design engineer to also serve as the construction manager. The law will end the practice utilized by some smaller governmental entities and their design engineers of using construction manager at-risk as a de facto design build. Many small governmental entities cannot use design-build for civil projects. Using construction manager at-risk as a de facto design build was a way to skirt the statutory prohibitions. That practice will now end.

With major funding goals having been addressed in the 84th Legislative session, the industry can breathe a little easier knowing that the public sector will be doing its part to support construction companies and their employees. 🐾

