

86th Legislative Session Primer and Preview

On January 8, 2019, the Texas Legislature convenes for 140 days for the 86th regular session. Texas is one of only four states that holds session every other year instead of on an annual basis – Montana, Nevada, and North Dakota are the other outliers. As a result, numerous bills are filed each session. In 2017, more than 6,500 were filed in the House and Senate and just over 1,200 bills passed and were sent to the Governor for signature. As with every session, there will be legislation introduced and enacted in 2019 that will impact the construction industry. This article provides an overview of key dates for the 86th regular session, potential measures that will directly impact the construction industry, and issues that may dominate the already limited timetable for the 2019 session.

Less than one out of every five bills filed last session made it to the Governor's desk, which means that in 2017, there was more than an eighty percent chance that a bill would die somewhere in the Texas Capitol. The deadlines for the 2019 session are listed below and are important to follow when tracking legislation, whether hoping a bill will fizzle out in committee, or pulling for a bill to land on the Governor's desk where it still has one major hurdle to overcome – the Governor's veto.

- November 12, 2018 – First day to pre-file bills for the 86th Legislature (as of December 17, 2018, 787 bills have been filed)
- January 8, 2019 – 86th Legislature Convenes
- January 15, 2019 – Legislative Budget Board General Appropriations Bills Delivered to the Governor and Legislature
- March 8, 2019 – Deadline to file bills and joint resolutions, other than local bills, emergency appropriations and emergency matters submitted by the Governor
- May 27, 2019 – Last day of 86th regular session
- June 16, 2019 – Last Day for the Governor to sign or veto bills passed during the 86th regular session

In the coming year there will undoubtedly be legislation introduced that will affect members of the construction industry. Below is a non-exhaustive list of potential legislation in 2019 that could have major impacts on the construction industry:

- Procurement: Watch for legislation

that will clarify the obligations of a CMAR to comply with competitive bidding requirements when soliciting subcontractor bids, add a prequalification process for contractors, modify the competitive sealed proposal selection process to require that price be at least 50 percent of the weighted evaluation, and expand remedies in the event a CMAR fails to comply with procurement requirements for subcontracts.

- Right to Repair: Look for potential legislation to extend right to inspect and repair provisions, similar to those that apply to residential construction under the Texas Residential Construction Liability Act to commercial projects.
- Local Ordinances Protection: Although not specific to the construction industry, look for legislation that would pre-empt municipalities from enacting employment and labor measures that affect all businesses, including those in the construction industry, such as the City of Austin ordinance requiring sick leave for employees.
- Lien Modernization: Omnibus legislation to reform Texas lien law has been in the works since 2013. Last session, lien-modernization legislation, which included a web-based system to track lien claims that is similar to those used in other states, died on the House floor. As one key member of the group working on this legislation put it, "it will be a fish or cut-bait" session for this legislation. Additionally, watch for legislation that would change the way liens on retainage are treated in the event of bankruptcy by an owner.
- Disclosure of Documents Incorporated into Construction Contracts: Look for potential legislation that will require a contracting party to provide documents that are incorporated by reference in a construction contract to the counterparty upon request and within a specified amount of time. If these documents are not provided, the party to the contract making such request will not be bound by the terms contained in such documents incorporated by reference.
- Reallocating Liability for Defective Design: There may be a renewed



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effort to legislatively override the Texas Supreme Court decision in *Lonergan*, through legislation that specifically provides that a contractor is not responsible for design defects and may not warranty the accuracy, sufficiency, or suitability of design or bid documents.

- Statute of Repose: In response to increased litigation by school districts at the end of the current ten-year statute of repose, there may be a push to shorten the time limit in which a suit for construction defects may be filed.

Each legislative session typically has two or three key issues that result in much debate and take most of the spotlight during the last 80 days of session. As a result, many bills, including those that may be important to the construction industry, die if they get stuck in the log jam created by legislation addressing hot-button issues (e.g., the Bathroom Bill and Sanctuary City Legislation in 2017). Although for some, H.B. 412, which would require the University of Texas and Texas A&M football teams to play a nonconference, regular-season football game each year may be the most important legislation considered in 2019, issues such as a projected budget shortfall, property tax relief, school finance reform, and school safety could monopolize the session. In addition to debating these issues, the House is electing a new Speaker for the first time since 2009 and introducing 27 new house members elected during 2018 midterm elections. Because of the new leadership



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and membership, this could be a relatively unpredictable session.

One the best ways to get involved and stay in the loop during the 86th regular session regarding issues impacting the construction industry is to join or participate in a trade association. Typically, these industry associations monitor and report on bills that could impact the construction industry. Moreover, it is important to get to know your legislator and attend local fundraising events. And always remember, your elected officials are there to serve you – do not hesitate to pick up the phone and call your legislator's office if there is an issue that is important to you or your company.