

# LEGISLATIVE UPDATE 2017



Presented by

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# BILL STATISTICS

Status	HB	HCR	HJR	HR	SB	SCR	SJR	SR	Total (HB/SB)	Total
Filed	4333	138	111	2707	2298	64	58	963	6631	10672
Passed	700	68	3	2682	511	29	6	961	1211	4960
Vetoed	36	0	0	0	15	0	0	0	51	51

# SIGNED INTO LAW

- **House Bills**

- HB 45 (foreign law)
- HB 89 (Israel)
- HB 108 (skills development fund)
- HB 639 (CTE insurance)
- HB 1449 (imposed construction fee offset)
- HB 1463 (ADA standards)
- HB 1469 (charter CTE teachers)
- HB 1698 (journeyman licensing)
- HB 1818 (Texas Railroad Commission)
- HB 2040 (building code)
- HB 2121 (state contract breach - atty fees)
- HB 2790 (apprenticeships)
- HB 2994 (continuing education)
- HB 3021 (indemnity for State negligence)
- HB 3270 (school background checks)
- HB 3349 (trade certification)
- HB 3706 (at-risk workforce development)
- HB 4181 (air quality permits)

- **Senate Bills**

- SB 302 (state bar)
- SB 807 (venue)\*
- SB 2105 (secondary student employment)

## HB 45

- Relating to requiring the Texas Supreme Court to adopt rules and provide judicial instruction regarding the application of foreign laws in certain family law cases.
  - Signed 6.14 / Effective 9.1
    - Since most foreign law bans also apply to arbitration tribunals, they call into question the ability of religious believers to settle family and other personal disputes through arbitration.
    - A similar foreign law ban passed in Oklahoma was ruled unconstitutional in 2013.

“Anti-Sharia Law” – American Laws for American Courts

## HB 89

- Relating to the requirement of a contractual provision in any contract with a governmental entity by a company providing goods or services verifying that the company: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.
  - Signed 5.2 / Effective 9.1
    - This legislation prohibits state and local governments from contracting with companies that boycott Israel, Texas' fourth leading trade partner.
    - Texas joins other states that have responded legislatively to this national origin discrimination. The legislation passed by Texas is by far the strongest in the nation.

Signed on Israel's Independence Day

Israel #1 trade partner of US – says Abbott

## CERTIFICATION TO NOT BOYCOTT ISRAEL

Pursuant to Texas Government Code §2270.002, the Department must include a provision requiring a written verification affirming that the Contractor does not boycott Israel and will not boycott Israel during the term of the contract. By signing the contract, the Contractor certifies that it does not boycott Israel and will not boycott Israel during the term of this contract.

Violation of this certification may result in action by the Department.

## HB 108

- Relating to the use of the skills development fund to facilitate the relocation to or expansion in this state of employers offering complex or high-skilled employment opportunities.
  - Signed 6.1 / Effective 9.1
    - The bill will allow the Texas Workforce Commission to use money from the skills development fund to support employers expanding in Texas or relocating to Texas who will provide highly skilled or complex employment opportunities.

Also allows funds to go to public junior colleges and technical institutes

## HB 639

- Relating to authorizing the purchase of certain insurance coverage by public schools for the benefit of businesses and students participating in career and technology programs and providing for immunity from liability of certain public school students participating in career and technology programs.
  - Signed 5.26 / Effective immediately
    - Authorizes public schools, such as the Greater Waco Advanced Manufacturing Academy, to buy insurance coverage for career and technology training.

Governmental Immunity for applicable students.

## HB 1449

- Relating to prohibiting local governments from imposing certain fees on new construction.
  - Signed 5.29 / Effective immediately
    - HB 1449 prohibits Texas cities from charging “linkage fees” on new construction or rehabilitated development to help pay for affordable housing.
    - Industry representatives successfully argued that “linkage fees” harm housing affordability by making development more expensive, ultimately increasing the price of housing by passing developer charges on to consumers
    - The city of Austin doesn’t have such a fee, though some had suggested implementing one.

Adler testified to Congress in favor of linkage fees.

Basically, fees from new construction to pay for affordable housing efforts.

COA had issued a task force memo in which this was a pillar of the plan to raise \$600 million over 10 years for affordable minority housing. \$2/per sq ft of new construction.

Texas Association of Builders and other similar organizations strongly supported this ban on linkage fees.

## HB 1463

- Relating to procedures for actions alleging failure to comply with certain standards to accommodate persons with disabilities.
  - Signed 6.1 / Effective 9.1
    - Proponents say the law will rein in unnecessary lawsuits arising from easily remedied architectural inadequacies under the Americans with Disabilities Act.
    - As a prerequisite to filing suit, a person asserting an ADA claim must give notice to the alleged non-compliant business containing information about the claimant, details of each alleged ADA violation, and the time, place, and manner in which the claimant discovered the alleged violation.
    - The recipient has the right to cure the violation within 150 days.
    - The Attorney General may bring an action against a person for filing an ADA claim in bad faith. The Attorney General may seek an injunction against the person, civil penalties up to \$50,000 per violation, and restitution against the recipient of a bad faith claim.

General prohibition against tenuous lawsuits.

Allows respondent (or potentially contractor) the 60 day cure period

## HB 1469

- Relating to qualifications for certain teachers employed by certain open-enrollment charter schools.
  - Signed 6.1 / Effective 9.1
    - The bill focuses on teaching requirements for non-core, vocational instructors arising out of an unintended consequence from a law passed in the 84th Legislature, requiring all charter school teachers to hold a four-year baccalaureate degree. The requirements for such instructors are subject matter expertise related to the subject taught, such as professional work experience, and at least 20 hours of classroom management training.

## HB 1698

- Relating to the licensing and regulation of a journeyman industrial electrician.
  - Signed 6.15 / Effective 9.1
    - HB1698 creates a new licensing category, not a new licensing requirement. It allows Texas Department of Licensing and Regulation to recognize a third party certification (NCCER Industrial Electrician) as the basis for allowing Electrical Apprentices in the industrial sector to be recognized for this license.

A person "who engages in electrical work exclusively at a business that operates a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation" would be eligible to become a journeyman industrial electrician. The testing for this license would be more narrowly tailored than that of a full journeyman electrician, and if the journeyman industrial electrician wanted to work elsewhere at the journeyman level he or she would have to take the full journeyman electrician exam.

Heavily supported by trade organizations

## HB 1774

- Relating to actions on and liability associated with certain insurance claims.
  - Signed 5.26 / Effective 9.1
    - HB 1774 targets the spike in hailstorm insurance claims, mandating a 61 day period following written notice to an insurer before the filing of a claim related to real property damage caused by various natural disasters, such as hail, flood, or wildfire.
      - It provides for the insurer's right to request an inspection. If the pre-suit notice and inspection requirements are not met, the law allows for abatement and a prohibition on any recovery of attorney's fees for the claimant.
      - It provides for the assumption of an adjuster's or insurance agent's liability by the insurer. Once the insurer assumes the agent's liability, the claims against the agent must be dismissed with prejudice.
      - Should the award made to a claimant account for less than 20% of the pre-suit damage demand, the bill denies recovery of attorney's fees.

Enacted the week after Harvey hit.

Under the current law, the penalty interest to the insurance company for underpayment of a claim is set at 18%. Under the new law, it will be a floating rate between 10-20%. Some noted insurance lawyers in the state are advising their clients to report Harvey claims to insurers by email prior to September 1 because of this change.

## HB 1818

- Relating to the continuation and functions of the Railroad Commission of Texas; providing for the imposition of fees.
  - Signed 5.22 / Effective 9.1
    - Industry lobbyists and regulators lauded lawmakers for passing House Bill 1818, the sunset bill that extends the RRC's operation for another 12 years and makes modest improvements to pipeline safety and enforcement reporting requirements. One agency commissioner said the bill would ensure that the agency in charge of overseeing the oil and gas industry in Texas would become "even stronger." The Railroad Commission is poised to get an extra \$3 million for technology upgrades.
      - The energy and natural resources industry is the top funding source for the state's 181 lawmakers. According to government accountability group Texans for Public Justice, the energy and natural resources sector supplied 11 cents of every dollar that lawmakers raised.

RRC oversees oil/gas regulations.

"Reform" but toothless

Tried to reform 3 different times over past few years.

Lawmakers took \$11.3 million from oil/gas lobbyist over past 2 sessions.

Said to expensive to implement proposals like a searchable database of violations by oil/gas companies – complaints against them – and inspection/enforcement reports.

## HB 2040

- Relating to the building code standards for new residential construction in the unincorporated area of certain counties; affecting the prosecution of a criminal offense.
  - Signed 6.14 / Effective 9.1
    - Local Gov't Code Chapter 233, gives counties authority to mandate that all homes in unincorporated areas be built to code and receive a minimum of three independent third-party code inspections. Counties can also require the builder to provide notice of whether the home complied with the mandated code requirements and inspections. A gap, however, exists in the counties' enforcement of code mandates. Under existing § 233.15, a builder can provide notice to a county that the home failed to comply with the code inspections and the county is powerless to enforce mandated requirements.
    - H.B. 2040 will simply close that gap and allow the county to use its current enforcement authority if a builder does not provide notice that the home shows substantial compliance with the code. H.B. 2040 further provides the builder an affirmative defense if a failure to provide proper notice is due to a failure of the code inspector to provide the builder with proper documentation.

Under that existing statute, counties can obtain injunctive relief to prevent a violation or threatened violation, or refer a builder for prosecution, but only if the builder does not provide proper notice of whether or not the home complied with the mandated code inspections.

under the existing statute, a builder can provide proper notice to the county that the home failed to comply with the code inspections and the county cannot use its enforcement powers, due to the fact that the builder provided proper notice under the law.

## HB 2121

- Relating to damages in certain contract claims against the state.

- Signed 6.9 / Effective immediately

- Amends Gov't Code § 2260.003 by adding Subsection (d), as follows:

(d) Authorizes an award of damages under this chapter (Resolution of Certain Contract Claims Against the State), notwithstanding Subsection (c) (relating to certain prohibitions relating to awards of damages), to include attorney's fees if:

- (1) the claim is for breach of a written contract for engineering, architectural, or construction services or materials related to those services; and
- (2) the amount in controversy is less than \$250,000, excluding penalties, costs, expenses, prejudgment interest, and attorney's fees.

“May” implies the award is discretionary.

"Unit of state government" means the state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

City waiver – Govt Code 271

John Cyrier sponsored and pushed through

## HB 2790

- Relating to funding for certain apprenticeship training programs.
  - Signed 6.9 / Effective 9.1
    - Rising tuition costs and an oversaturation of the entry-level market have created a greater demand for skilled trades. However, apprenticeships have largely fallen off the radar when it comes to options in pursuing post-secondary education.
    - As apprenticeships are an extremely effective method of combining on the job training with classroom education to give students the hands-on experience and training they need to be successful in their trade, the legislation seeks to keep up with technological advances and the growing need for more educated tradesmen.

Removes requirement that apprenticeship training programs have to be partnered with school districts. Independent programs can receive funding (need to comply with audit and records requirements)

## HB 2994

- Relating to workforce continuing education offered by public junior colleges.

- Signed 6.9 / Effective 9.1

- The bill allows a public junior college to enter into an agreement with a school district, organization, or other person that operated a high school to offer workforce continuing education courses to persons in high school who were at least 16 years old on the census date of the applicable course.
- A public junior college could waive all or part of the tuition and fees charged to a student for a workforce continuing education course if: the student was enrolled in high school; the student was at least 16 years old, an emancipated minor, and not enrolled in secondary education; the student was under the age of 18 and incarcerated; all or a significant portion of the college's costs for facilities, instructor salaries, equipment, and other expenses for the course were covered by business, industry, or other local public or private entities; or the course was taught in a federal correctional facility and the expenses for the course were funded by the federal government.

## HB 3021

- Relating to indemnification and duties of engineers and architects under certain governmental contracts.
  - Signed 6.15 / Effective 9.1
    - The bill establishes that a state or governmental entity cannot require a contractor to defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.
    - The bill also makes the laws established in Local Gov't Code, sec. 271.904(a)-(e) applicable to contracts between state agencies and an architect or engineer for their services under the Professional Services Procurement Act. State agencies include a department, commission, board, office, or other agency in the executive or legislative branch, including a higher education institution, as well judicial branch entities.

“would establish that a state or governmental entity could not require a contractor to defend the state for claims or liabilities resulting from the negligent acts or omissions of the state governmental entity or its employees.”

Prohibits broad and intermediate form indemnity provisions in contracts between engineers/architects and state agency

Good news for the industry

Broad form – contractor even for owners sole negligence

Intermediate – cover's owners negligence unless sole negligence

Limited/narrow – only covers contractor for own negligence

## HB 3270

- Relating to criminal background checks for persons employed by certain public school contractors.
  - Signed 5.30 / Effective 9.1
    - The bill decides when the state's mandatory background check applies to school construction projects. More importantly, for most of members' job sites, their workers will no longer require a check (e.g., greenfield projects, non-instructional facilities, secure job sites at existing schools). And now that a single standard is clear in statute, reciprocity within a region becomes easier to accomplish.

Check for - direct contact with students

Direct contact if: Instructional facility, or work completed week before facility will be used

For existing facilities if work: barrier fence, has a policy prohibiting employees from interacting or entering student areas (and enforces);

Felonies, etc

"This bill was several years in the making and makes it crystal clear to school districts which workers are to be background checked and what offenses they're to be checked for under the Safe School bill," Van Arsdale said. "This bill simply codifies the original legislative intent, and it is a building block to help deal with the uncertainty around the school background checks as to what is required by contractors," said Chatron.

BUT AUSTIN – BAN THE BOX

## HB 3349

- Relating to creating an abbreviated certification program and probationary and standard certificates for trade and industrial workforce training.
  - Signed 6.15 / Effective immediately\*
    - The bill requires the State Board for Educator Certification (SBEC) to create a probationary trade and industrial workforce training certificate and a standard trade and industrial workforce training certificate that could be obtained through an abbreviated educator preparation program.

\* but only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 85th Legislature.

## HB 3706

- Relating to certain alternative education programs designed to address workforce development needs for at-risk students.
  - Signed 6.15 / Effective immediately
    - The bill strengthens opportunities for at-risk youth through private or public community-based dropout recovery education programs in class or online.
    - The bill sets up the mandates for a permissible Internet online dropout recovery education program.

## HB 4181

- Relating to the electronic transmission of certain notice required for air quality permits.
  - Signed 6.1 / Effective 9.1
    - The bill allows for electronic transmittal of written notice as to the preconstruction operating permit renewal application deadline by the Texas Commission on Environmental Quality

(c-1) A notice under Subsection (c) may be sent by electronic communication if the commission develops a system that reliably replaces registered or certified mail as a means of verifying receipt of the notice.

## SB 302

- Relating to the continuation and functions of the state bar.
  - Signed 6.15 / Effective 9.1
    - The bill continue the State Bar for 12 years. Other provisions include:
      - making various enhancements to the grievance process, including new investigative tools, sanction guidelines, and greater opportunity for earlier resolution of complaints;
      - creating an independent ombudsman to answer questions from those seeking to file grievances and to ensure that the system is working;
      - requiring the State Bar to post more data on its website about attorney disciplinary actions; and
      - maximizing the use of the informal dispute resolution program in the grievance system.

Sunset in September, 2017 – now 2029

## SB 807

- Relating to choice of law and venue for certain construction contracts.
  - Signed 6.9 / Effective 9.1
    - The bill establishes that if a construction contract contains a provision making the contract or any conflict arising under the contract subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by the party promising to construct or repair the improvement.
    - While current law gives a contractor and subcontractor the ability to void such a clause in a construction contract, SB 807 broadens the coverage of the law to include all project participants, including architects, engineers, suppliers and equipment rental companies

Since April 1, 2009, Chapter 272, Business & Commerce Code, has provided protection for a general contractor and a subcontractor under a contract that is “principally for the construction or repair of an improvement to real property located in this state,” by giving the contractor or subcontractor the ability to void a provision in the contract “making the contract or any conflict arising under the contract subject to another state’s law, litigation in the courts of another state, or arbitration in another state,” if the contract obligates the general contractor or subcontractor, as the general contractor’s or subcontractor’s principal obligation under the contract, to provide labor and/or labor and materials for said construction or repair.

Effective September 1, 2017, Senate Bill 807 (SB 807) broadens the scope of Chapter 272 to include all project participants, including architects, engineers, suppliers, and equipment rental companies, by adding Section 272.0001 and amending Sections 272.001 and 272.002.

## SB 2105

- Relating to the requirement that the Texas Workforce Commission provide certain employment information for secondary school students.
  - Signed 5.19 / Effective 9.1
    - The bill allows for increased access to Career and Technology Education opportunities for students.
    - Rather than generalized classes that teach basic construction, SB 2105 will allow for programs tailored to the industries located in individual communities – increasing realistic CTE opportunities for students across the state and the incentive for local school districts and industries to partner together.

## VETOED

- House Bills
  - HB 2783 (public information act litigation costs)
- Senate Bills
  - SB 744 (tree planting credit)
  - SB 813 (frivolous regulatory action)
  - SB 1215 (contractor design defect liability)

## HB 2783

- Relating to the assessment of litigation costs and attorney fees in certain lawsuits under the public information law.
  - Vetoed 6.15
    - “By threatening the taxpayers with attorneys’ fees, House Bill 2783 creates an incentive for requestors of public information to sue the government as quickly as possible instead of waiting for the statutorily defined public information process to play out. The stated purposes of this bill could have been achieved without giving lawyers the ability to threaten taxpayer-funded attorneys’ fees awards against governmental bodies that are just trying to follow the law.” - Abbott

## SB 744

- Relating to a tree planting credit to offset tree mitigation fees imposed by a municipality.
  - Vetoed 6.15
    - “Cities telling landowners what they can and cannot do with the trees in their own backyard is an assault on private property rights. Senate Bill 744 appears to be a compromise bill that imposes a very minor restriction on some municipal tree ordinances. But in doing so, it gives the imprimatur of state law to the municipal micromanagement of private property, which should be abolished altogether. This bill was well-intentioned, but by the end of the legislative process it actually ended up doing more to protect cities than it did to protect the rights of property owners. I applaud the bill authors for their efforts, but I believe we can do better for private property owners in the upcoming special session.” - Abbott

## SB 813

- Relating to recovery of damages, attorney's fees, and costs related to frivolous regulatory actions by state agencies.
  - Vetoed 6.15
    - “Senate Bill 813 is well-intentioned, but it subjects the State to the possibility of extensive financial liability. Under the bill, taxpayer liability would be triggered any time a judge decides the State’s action is ‘unreasonable,’ a vague and broad standard that varies with the eye of the beholder. This financial liability would be borne by the taxpayers, not by the bureaucrats who caused the problem. The bill was inspired by legitimate concerns about regulatory overreach, but exposing the State fisc to limitless jury verdicts is not the right solution.” - Abbott

## SB 1215

- Relating to the creation of a joint interim committee to study issues related to construction contracts.
  - Vetoed 6.15
    - “Legislation mandating legislative studies and legislative interim committees is unnecessary. The Legislature is free to study construction contracts with or without this bill.” – Abbott
    - Reps. Workman, Shine, Oliveira, Hunter, and Kacal organized to salvage the bill and amend it to create a joint interim committee. The group will study nearly every issue surrounding construction contracts, including: statute of repose, right to repair, allocations of risk and liability, relationships between parties, insurance, liens, warranties, standards of care, and civil actions.

## HB 3065/SB1506

- Lien Law Modernization
  - Proposed sweeping changes to lien law practices
    - Lien website
    - Deadline for affidavit begins from date contract is completed or contract is terminated – rather than day on which indebtedness accrues
    - No more 2 & 3 months pre-lien notices
    - More security for payment (owner can automatically withhold)

Under this legislation, this would be clarified to state that the clock starts on the “date the work under the original contract is completed or the original contract is terminated.” The time frame to file an affidavit would remain the same – a claimant must file the affidavit no later than the 15th day of the fourth calendar month. Under proposed legislation, this time period wouldn’t start until the project is finished or the general contract is terminated.

There would be no more monthly notices!

The new legislation would treat contractors and subs alike rather than require parties down the chain to submit monthly statements or work done/material furnished. A claimant would also be able to use broad descriptive terms, abbreviations, or symbols customary in the trade to describe the work that was done or the material that was furnished.

Automatically allows owner to withhold funds from GC in amount necessary to satisfy the lien.

## Austin Notes

- Reduce/Reuse
- Ban the Box
- Solar Ready

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Questions?

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