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# **2023 Texas Legislative Update**

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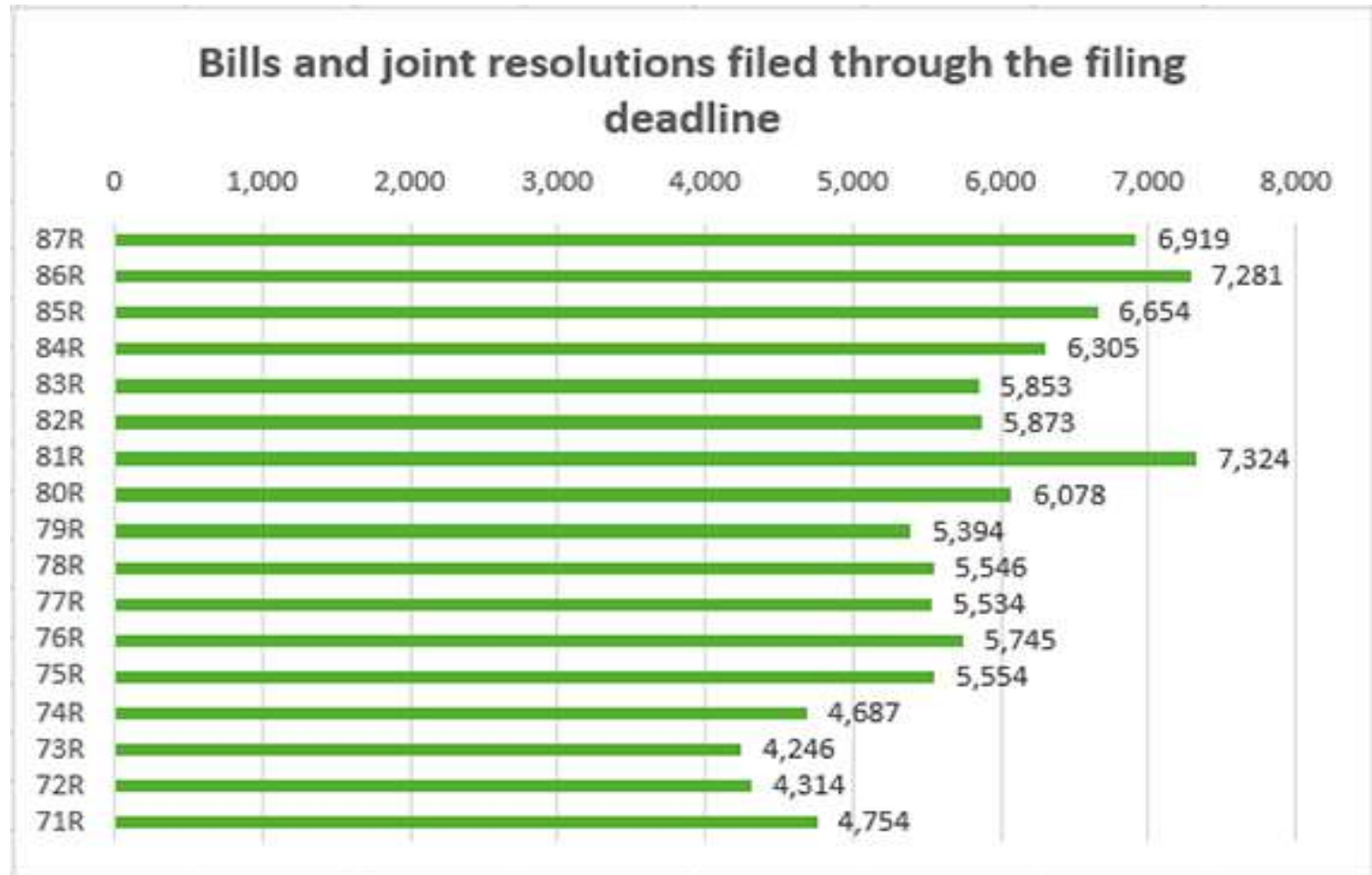
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# Session Stats

- 8046 bills filed
- 1246 passed
- 76 vetoed



# Consistency in Employment Regulation

## **HB2127 (Burrows/Creighton) - Effective 9/1/23**

- Local governments can no longer regulate under statutes listed (including labor code) unless the state legislature grants them the authority to do so under some other statute.
- Prohibition includes employment leave, hiring practices, breaks, benefits, scheduling practices, and any other terms of employment that exceeded or conflicted with federal or state law for employers other than a municipality or county.

# Consistency in Employment Regulation

## **HB2127 (Burrows/Creighton)**

- Authorizes any person who had sustained an injury including a trade association representing the person also can bring a lawsuit.
- Claimant could recover declaratory and injunctive relief along with costs and reasonable attorney's fees.
- Governmental immunity is waived for these claims.

# Protecting Right to Repair

## HB2965 (Vasut/Creighton) – Effective 9-1-23

- Added anti-contractual waiver language to existing law

**Existing Law:** Requires cities, counties, school districts, universities, and other governmental entities to take certain steps prior to suing for construction defects, including:

- (i) provide a written report identifying the defects to each party with whom the entity has a contract for the design or construction of the project and
- (ii) to allow them a reasonable opportunity to inspect and repair the defects.

# Protecting Right to Repair

- Requires an inspection report, from a licensed engineer which identifies the defect, the current condition of the affected improvements, and descriptions of any modifications made.
- Contractor has 5 days to provide the report to each subcontractor whose work is subject to the defect claim.
- All contractors involved in a project with a defect claim have 30 days to inspect the alleged defect and damages.
- After this, the contractors then have at least 120 days to correct any defect or enter into a separate agreement with the governmental entity to correct it.
- If a public entity files suit without providing the required written report or giving contractors an opportunity to inspect and repair the defects, the suit will be dismissed without prejudice.
- If the public entity fails to provide the report a second time, then any subsequent suit will be dismissed with prejudice.

# Design-Build Certificate of Merit

## **HB 2007 (Martinez/Parker) – Effective 9-1-23**

- Public works design-builder can now add its design team members to an owner's lawsuit or arbitration without having to file its own certificate of merit.
- Design-builders are now in a better position to defend themselves against the owner's claim and simultaneously seek contribution from downstream designers if and to the extent they are responsible, without having to admit the owner's allegations.

# Unsigned Change Orders

## **HB 3485 (Bell/Johnson) – Effective 9-1-23**

- Allows contractors and subcontractors to elect to not proceed with disputed extra work in both public and private contracts under certain conditions.
- Contractors can refuse to proceed if:
  - No executed change order for the additional work; and
  - The amount of disputed/unsigned change orders exceeds 10% of the contract amount.



# Unsigned Change Orders

## **HB 3485 (Bell/Johnson) – Effective 9-1-23**

- Contractors who elect not to proceed with extra/additional work would not be responsible for any damages associated with the election to not proceed.
- Fights over “actual or anticipated value” and who gets to decide those issues are expected.

## K-12 Background Checks

### **HB4123 (Guillen/Zaffirini) – Effective 9-1-23**

- Applies heightened background check/criminal history record standards for workers who will be around kids in school and creates a “qualified school contractor” designation.
- Qualified school contractor must get same information from subcontractors who can also become “qualified school contractors”.
- Excludes new construction which is completed before school opens.
- Excludes sanitary facilities work that is high fenced and a policy to separate the workers from the kids.

# Specialty Business Court

## HB 19 (Murr/Hughes) – Effective 9-1-23

- Specialty business court to address and resolve certain high value (greater than \$10 million or \$5 million depending on the claim) business disputes or that involve publicly traded companies.
- the court would **not** have jurisdiction over:
  - a civil action brought by or against a governmental entity; or
  - any claim related to deceptive trade practices, trusts, estates or family law; or
  - damages for bodily injury or death.

# Specialty Business Court

- Appeals would be to a new Fifteenth Court of Appeals
- Business court judges would be appointed by the governor, with advice and consent of the senate, to each division of the business court. Business court judges must:
  - (1) be at least 35 years of age;
  - (2) be a United States citizen;
  - (3) have been a resident of a county within the division of the business court to which the judge is appointed for at least five years before appointment; and
  - (4) be a licensed attorney in this state who has 10 or more years of experience in:
    - (A) practicing complex civil business litigation;
    - (B) practicing business transaction law;
    - (C) serving as a judge of a court in this state with civil jurisdiction;
    - (D) any combination of experience described by Paragraphs (A)-(C).

# Statewide Appellate Court

## **SB1045 (Huffman/Murr) – Effective 9-1-23**

- Fifteenth Court of Appeals would allow judges to apply specialized experience in subjects including sovereign immunity, administrative law, and constitutional law and could help ensure consistency of decisions on such legal issues across the state.

# Statewide Appellate Court

Exclusive intermediate appellate jurisdiction over:

1. Certain matters brought by or against the state or other designated state agency, including a university system or brought by or against an officer or employee of the state arising out of the employee or officer's conduct;
2. Matters in which a party filed a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general was a party to the case; and
3. Any other matter as provided by law (including the specialty business court cases).

# Payment Bonds for Gov't Leases

## HB 2518 (Bell et al)

- Gov't Code 2252.909
- Requires lessee to provide bonding for construction projects.
- 90 Day Notice of Commencement to gov't landlord with details on construction.
- Gov't entity may deny right to proceed within 10 days of receipt.
- Contractor to provide bonds to subs.

# EMR Ratings

## **HB 679 (Bell) – Effective 9-1-23**

- Prohibits a construction contract solicitation from containing a term requiring a person to have a specified experience modifier in order to accept the offer or submit a bid.
- A violation of these provisions would be voidable against public policy.



# Venue for Construction Disputes

## ~~HB 2879 (Oliverson/Bettencourt) – Effective 9-1-23~~

~~A venue provision in a construction contract with a resident of this state which requires suit to be filed outside this state is void as a matter of public policy.~~

~~If void, then suit must be brought where~~

- ~~— (1) the defendant resides;~~
- ~~— (2) the cause of action accrued; or~~
- ~~(3) the property that is the subject of the litigation is located.~~

Vetoed on 6-15-23

# RCLA Revisions

## **HB2022 (Leach/King) Effective - 9-1-23**

- Limits a contractor's liability to:
  - Defective conditions that proximately caused an actual physical damage to the residence,
  - An actual failure of the building component to perform its intended function,
  - Or a verifiable danger to the safety of the occupants of the residence.

## RCLA Revisions

Other exemptions include:

1. Failure to timely notify a contractor of a construction defect;
2. Normal cracking due to drying or settlement of construction components within the tolerance of building standards; and
3. The contractor's reliance on certain written information that had been modified and the contractor did not know or could not have been reasonably expected to know of the modification; and
4. Damages caused by failure to mitigate the damages or maintain the residence.

## RCLA Revisions

Habitability warranty claims require:

1. That a construction defect was latent at the time the residence was completed or title was conveyed to the original purchaser; and
2. That the defect rendered the residence unsuitable for its intended use as a home.

## RCLA Revisions

- Contractor may be entitled to up to three inspections during the 35-day period after the contractor was notified of a defect
- The amount of time contractors would be given to make a written offer for repair of the defect is extended from 45 days to 60 days after the contractor received notice of the defect.
- Requires the contractor to specify the time for completion of the repairs if it would be more than 60 days.

# Residential Limitations/Repose

## HB2024 (Leach/King) Effective – 6-9-23

- If the builder provides a compliant written warranty, then statute of repose drops from 10 to 6 years.
- Written warranty would be required to provide a minimum period of:
  - One year for workmanship and materials;
  - Two years for plumbing, electrical, heating, and air-conditioning
  - Delivery systems; and
  - Six years for major structural components.

# Protection for TxDOT Inspectors

## **HB3156 (Leach) Effective - 9-1-23**

- Applies if providing construction monitoring or inspection services to TxDOT on a transportation construction or maintenance project.
- Inspector not liable for personal injury, property damage, or death claims arising from project duties if:
  - Inspector does not have authority to direct operations of contractor or subcontractors, or
  - No right to control contractor's or subcontractors' means & methods or safety program, and
  - Inspector substantially complies with contractual obligations.
- Does not apply to gross negligence claims.

**Thank you**

**Questions?**

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