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THE 86TH TEXAS LEGISLATIVE SESSION: A GRANDSLAM FOR THE TEXAS CONSTRUCTION INDUSTRY

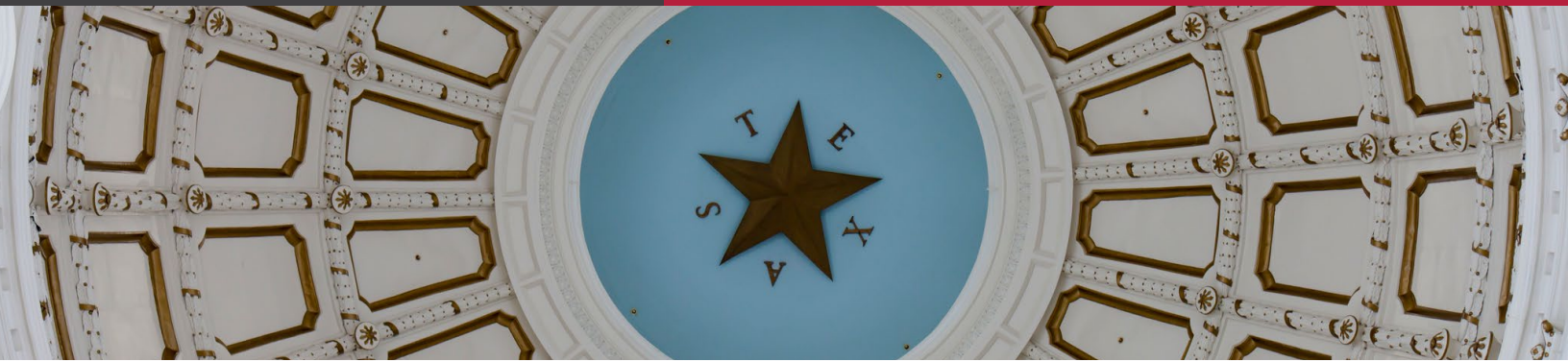
by Jeff Leach

Counsel, Gray Reed

State Representative, District 67 (Collin County)

Chairman, House Committee on Judiciary and Civil Jurisprudence

July 15, 2019



After meeting for 140 days at the Capitol, Texas Legislators adjourned the 86th Legislative Session on May 27th, 2019. For the construction industry as a whole, many are saying that the 86th Legislative Session was one of the most productive in recent memory. Several “construction-related” bills which had been worked on for numerous sessions ultimately passed the finish line and were signed in to law by Governor Greg Abbott in 2019. This was in large part due to the collaborative nature of the legislative session and the hard work of numerous legislators. But, of course, the successes for the industry would not have occurred but-for the dedication, expertise and toil of industry leaders, professionals, attorneys and other stakeholders.

The five key bills listed below should be considered monumental legislative victories for the entire industry, creating transparency, fairness and a level playing field between owners, contractors, subcontractors and all parties involved in construction projects across the state of Texas. This list is by no means exhaustive, but should give you a glimpse of just how successful the 86th Legislative Session was for the people and companies who are literally building Texas and making the Lone Star State stronger than it already is:

1. For starters, I was proud to author and pass into law House Bill 1999, commonly referred to as the “Right to Repair” legislation. This bill amends the Texas Government Code to set out provisions relating to a claim asserted by a governmental entity against a contractor, subcontractor, supplier or design professional for damages arising from damage caused by an alleged construction defect in an improvement to real property that is a public building or public work or for indemnity or contribution for such damages. Among other provisions, this legislation requires a governmental entity to provide certain parties with a report and an opportunity to inspect and correct any construction defect or related condition before bringing a legal action asserting such a claim. Further, the legislation provides for the dismissal of an action brought by a governmental entity that does not comply with these requirements.
2. House Bill 1734 by my colleague and friend, Representative Justin Holland (R, Rockwall), provides important transparency measures for school districts’ use of proceeds resulting from litigation relating to defective design and construction of school facilities. Aimed at cracking down on certain trial lawyers who have created cottage industries getting retained by school districts to file suit against their contractors, the bill will, among other provisions, require school districts to use litigation proceeds on the actual expenses that are reasonably related to the repairs which are deemed necessary, instead of on unrelated expenses that may be on the school district’s wish list. This will, no doubt, reduce frivolous litigation and reduce insurance costs for contractors who are performing school work in Texas.
3. My colleague and legislative classmate, Dr. Greg Bonnen (R, Galveston), passed House Bill 2826 into law. This bill drastically improves the approval process for political subdivisions of the state who are seeking to enter into contingent fee contracts with private attorneys to, in many cases, sue contractors for a multitude of claims – some meritorious and some meritless. The bill applies to districts, authorities, counties, municipalities, other political subdivisions of the state and local government corporations or other entities acting on behalf of a political subdivision in the planning and design of construction projects. Importantly, in relevant part, the legislation establishes transparency requirements and

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puts in place a Qualification-Based Selection system in these contingent fee contract arrangements – something that will, without question, benefit the construction industry and, more important, guard against frivolous lawsuits and, in doing so, protect Texas taxpayers.

4. Further, I was proud to file and pass House Bill 2899 that relates to a contractor's liability for the accuracy, adequacy, sufficiency, suitability or feasibility of certain project specifications. Partially addressing the age-old "Lonergan" issues, this bill only applies to a contract for the construction or repair of a road or highway owned or operated by the Texas Department of Transportation, a regional tolling authority, a regional mobility authority, a transportation corporation, or certain counties to extend or expand that road or highway. Bottom line: under the terms of this new legislation, the Contractor will not be liable for any damage caused by a defect in project specifications or the errors, omissions or negligent acts of a governmental entity or contracted third party entity in the rendition or conduct of professional duties related to the specifications.
5. Finally, Senate Bill 1928, by Senator Fallon (R, Frisco) specifies that the affidavit required to accompany a Certificate of Merit, under Civil Practice and Remedies Code Section 150.002, has to be signed by a third party professional who "practiced" in the same area of practice as the defendant. This replaces the broad and often-confusing requirement that the third party professional was *knowledgeable* in the area of practice.

Again, these five bills should be considered victories for the construction industry, as a whole. While we were not able to get some of our priorities over the goal-line – including lien law reforms and statute of repose revisions – those bills will, no doubt, be key priorities for the industry in the 87th Texas Legislative Session. And, if that legislative session is as collaborative and laser-focused as the one that just concluded, I am confident we'll be able to celebrate once again in the summer of 2021.

Until then, if you have any questions or desire more information about the above bills (or any bills that weren't listed), or if you want to discuss your own concerns or ideas for legislation, I invite and encourage you to reach out to me directly. God bless the Great State of Texas!

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. During the 86th Legislative Session, he served as Chairman of the House Committee on Judiciary & Civil Jurisprudence.

In addition, Jeff practices at the law firm of Gray Reed 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.

Jeff can be reached at jleach@grayreed.com or jeff@jeffleach.com.