

# **TCA 2017 Legislative Issues**

## **Lien Law Modernization**

Texas' lien laws are considered by many to be the most burdensome and complex in the country and it is extremely difficult to navigate through those laws. The original intent of the lien laws was to provide a statutory remedy to secure payment for labor, materials, or machinery furnished in the improvement of property. This has been lost in, among other issues, the different notice requirements and deadlines placed on claimants to secure their lien rights. Texas' lien laws should be revised to make the procedures for perfecting and maintaining one's lien rights straightforward, and compliance with those procedures should not be difficult, nor a stumbling block to maintaining lien rights. An early notice system, elimination of several confusing concepts unique to Texas, and providing for more timely and accessible project information, combined with a robust public Internet based system accessible by owners, construction companies, suppliers, lenders and title insurance companies will provide a modernization of an outdated, yet vital statute.

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## **Attorney Fees**

A Texas statute allows for recovery of attorney fees for unpaid labor performed or materials furnished. This recovery is allowed against an individual or a corporation. The statute should be amended to allow for recovery against any individual or legal entity.

## **Responsibility for Defective Plans and Specifications**

In Texas, the contractor bears the liability for defects in construction that are based on construction documents provided by the owner to the contractor. The construction team should not be liable for construction that is defective due to erroneous documents furnished by the owner.

## **Right to Repair Construction Defects**

If a construction defect claim is being made, the construction team should receive a notice of possible defects; have a right to inspect the alleged defect; and a right to repair the alleged defect.

## **School Background Checks**

Workers on certain public school construction projects are required to pass a background check. With over 1,200 school districts in Texas setting requirements for the background checks, the monetary and time expense to the thousands of construction workers is enormous, and this expense gets passed to the school district in higher construction costs. A statewide, uniform, and portable system is needed.

## **State Breach of Contract**

State law allows for a lawsuit against the state for a claim of a breach of contract. Some cleanup of the statute is needed with regard to attorney fees, use of the State Office of Administrative Hearings, and change orders.

## **Worker Classification**

An employer is required by law to classify its workers on construction projects as employees or independent contractors. Except for instances of catching employers when someone files an unemployment claim or when the employer's state and federal unemployment tax returns do not match, there is very limited enforcement of the law. The state should provide better enforcement of the law to stop the violators, yet not impinge on those who properly use and classify independent contractors.