



Construction Legislation from the 88th Regular Session

Texas legislators met for the 88th regular session from January 10, 2023, to May 29, 2023. The following bills are expected to impact the construction industry when they become effective on September 1, 2023.

Comprehensive local government preemption – [HB 2127](#) (Burrows/Creighton)

- 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

Public project right to repair: banning waivers – [HB 2965](#) (Vasut/Creighton)

- Prevents owners from requiring a contractual waiver of the right to repair statute
- Requires report, inspection, and chance to correct defects before suit can be filed.

No certificate of merit for 3rd party design-build claims – [HB 2007](#) (Martinez/Parker)

- 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.

Right to refuse to perform unsigned change orders – [HB 3485](#) (Bell/Johnson)

- Contractors can refuse to proceed if: No executed change order for the additional work; and the amount of disputed/unsigned change orders exceed 10% of the contract amount.

Streamline of school background checks for K-12 projects – [HB 4123](#) (Guillen/Zaffirini)

- Applies heightened background check/criminal history record standards for workers who will be around kids in school and creates a "qualified school contractor" designation.

Specialty business trial court – [HB 19](#) (Murr/Hughes)

- Specialty business court to address and resolve certain business disputes in which the value disputed exceeded \$10 million, excluding interest, statutory damages, exemplary damages, penalties, attorney fees and court costs.

Specialty statewide appellate court – [SB 1045](#) (Sen Huffman/Rep Murr)

- 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;
- 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
- Any other matter as provided by law (including the \$10mm+ business court cases above)

Limiting use of workers comp experience mods – [HB 679](#) (Bell/Schwertner)

- 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.

Residential construction liability cleanup – [HB 2022](#) (Leach/King)

- Imposes even stricter limitations on recoverable construction defect, warranty, and habitability claims.

Six-year statute of repose for residential construction – [HB 2024](#) (Leach/King)

- If the builder provides a compliant written warranty, then the 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.

[Click here for full copies of any of these bills.](#)

For more information, please contact [Ben Westcott](#).