



Lien Law Reform?

It is well known that Texas has some of the most complex (and confusing) lien statutes in the country. In recent years, trade organizations, construction industry leaders, and even lawyers have aligned to push for reform of these lien laws. With each legislative session comes renewed hope that our state lawmakers will finally pass a bill to modernize and simplify mechanic's liens in this state.

The Texas legislature meets once every other year for approximately five months. As a result, each November election cycle leads into a new legislative session the following January. And with each legislative session comes optimism for statutory reform on certain hot topics in the construction industry—including lien reform.

For the past decade various industry groups, spearheaded by the Associated Builders and Contractors of Texas ("ABC"), and Associated General Contractors Texas Building Branch ("AGC"), have been meeting with state representatives and other elected officials in an attempt to convey the difficulties in the current lien law regime. In a few prior legislative sessions, bills have been introduced in committee that could have reformed Texas lien laws, typically in a fashion similar to many other states in the union. However, the state legislature has failed to enact any of these proposed changes.

In the 2019 (86th) legislative session, House Bill 589 became the latest attempt to modernize and streamline Texas lien law, but never made it out of committee. Among many potential changes, HB 589 proposed:

1. establishing a lien website to allow easy access to project information as well as a venue for all lien notices,
2. early notice of relevant project information and potential lien claimants,
3. allowing lien claims for work performed beyond the original contract scope/amount, and
4. easing some of the more onerous details currently required in lien affidavits.

While HB 589 was unsuccessful in 2019, we anticipate that many of the proposed changes to Texas lien law will be reconsidered in the 2021 session.

Other construction industry items potentially gaining traction for the 87th legislative session include:

1. **a statute limiting contractors' liability for design defects** – similar to HB 2899, which was passed last session limiting design liability for road and bridge contractors. 2021 may see a more wide-reaching version passed.
2. **a reduction of the statute of the repose**. Currently set at 10 years, a bill that would have reduced the repose period made it out of committee before dying on the House floor. We anticipate that the industry will make another push at repose reform.

3. ***a statute allowing for recovery of attorneys' fees for breaches of contract by the state*** for amounts in controversy over \$250,000. This bill passed the House but not the Senate in 2019. This is another issue supported by various industry groups and likely to see a renewed effort in the 87th legislative session.

The 2021 legislative session offers exciting possibilities for the industry. Stay engaged and stay tuned in to Andrews Myers for updates every step of the way.

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