



Legislative Report

**82nd Texas Legislature
Regular Session
2011**

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Introduction

No two legislative sessions are alike. What all sessions have in common is that it is easier to kill legislation than to pass legislation. That is about all this session had in common with previous sessions.

Many of us, when referring to the time when our Texas Constitution was written (1876), say there was a typographical error—our founding fathers did not mean for the Texas Legislature to meet 140 days every 2 years—it was supposed to read 2 days every 140 years!

This is my second report to you as President of ABC of Texas. As I mentioned in the report two years ago, this is intended in part to document our accomplishments over the last two years, as well as to inform ABC of Texas members as to the results of the 82nd Legislature in Regular Session.

As last time, this report is quite long and detailed, but it is my hope that you will take the time to read it even if you do so in sections. It is designed to give you a good snapshot of our efforts and serve as a reference for the future.

I welcome any questions, suggestion or other input following your review.

Overview of the 82nd Texas Legislature

Almost all of us are aware that this Texas Legislature faced the most serious budget crisis of modern times. We simply did not have enough money to fund anticipated needs based on past appropriations.

To complicate matters, we had to redistrict Congressional, State Senate, State House of Representatives and State Board of Education Districts to respond to the decennial U.S. Census.

And, there were 28 agencies under Sunset Review! This means there were 28 separate bills needing to pass to keep these agencies operating in the future.

As always, leaders of both houses and the Governor also had their priorities that would need to be addressed.

All of the matters listed above are priorities that come before those of outside groups.

The legislative process in Texas is sometimes compared to a funnel. As the session continues, it gets narrower and narrower (meaning everything competes for time). Timing and picking “champions” (bill authors) is more and more critical as the agenda gets more and more crowded.

Further complicating matters this session (and helping in many cases) was the election of 34 new members of the Texas House (3 others had served before, just not last session). This created a Republican super-majority in the Texas House of 101 of the 150 members (after 2 Democrats changed parties before the session following the defeat of 21 Democratic incumbents). The Senate, however, remained at a 19-12 Republican advantage (2 votes short of a super-majority).

Because of the crowded agenda and potential acrimony caused by complex issues, ABC’s State President remarked that the key to success this session would be to “avoid stray bullets.”

What ultimately transpired was that the minority Democrats in the House tended to rely on parliamentary maneuvers to delay bill passage and limit the number of bills that would ultimately pass. Last session, it was late-session “chubbing” (frivolous debate) on the House Local and Consent Calendar to avoid a vote on Voter ID. This session, it was points of order. Many an important must-pass bill had to return to committee this session to repair technical points of order. Most observers acknowledge that they had never seen so many points of order raised in the House.

Prior to the session, the ABC of Texas Board had prepared a list of Legislative Priorities for the 82nd Texas Legislature. While we adopted initiatives of other groups, ABC of Texas elected not to pursue individual association initiatives in light of the crowded agenda. That is not to say that ABC of Texas was not pursuing initiatives, we were pursuing known initiatives in cooperation with other groups. Following that meeting, we had two chapters that developed initiatives on their own which were supported by ABC of Texas.

The Greater Houston Chapter had two initiatives dealing with unfavorable court decisions and the TEXO Chapter wanted to establish guidelines for Public-Private Partnerships. In addition, both Associated General Contractors-Texas Building Branch (AGC-TBB) and the Texas Construction Association (TCA) had other initiatives that were beneficial to ABC of Texas members (and that we had partnered on before). So, even without significant individual association initiatives from the ABC of Texas Board, we ended up with a daunting list of initiatives that would benefit the construction industry and ABC of Texas members.

When the dust cleared at the end of the session, some veteran ABC of Texas Board members remarked that this was ABC’s best session ever.

In hindsight, the construction industry's and ABC's success were due in large part to the development of strategic partnerships on legislation beneficial to more than one group. This type of coalition-building was a key part of the Strategic Plan for ABC of Texas.

Another part of our Strategic Plan was the implementation of a larger and more meaningful state political action committee. To that end, chapters raised and contributed more money than ever to ABC PAC. That allowed ABC PAC to play a role in electing 15 of the 21 Republicans that defeated incumbent Democrats. That would prove a significant factor in our success this session. After all, getting the right people in office is the most important first step to having a successful legislative session.

But, as happened two years ago, not all priorities were dealt with in the Regular Session. A last-minute filibuster killed a critically-important fiscal matters bill that was necessary to certify the budget.

Governor Rick Perry called the 82nd Texas Legislature into Special Session at 8:00 a.m. the morning after the Regular Session ended.

At the time this report was written, Governor Perry had added six issues to the call (in five different proclamations)—fiscal matters, health care issues, Congressional redistricting, Texas Windstorm Insurance Association, security screenings, and some immigration-related issues such as the federal Secure Communities Program, sanctuary cities and drivers' license security.

This report will deal with the activities in the Regular Session. A supplemental report on the First Special Session will be prepared if there is legislation passed that uniquely affects the construction industry.

Summary

Preparations for the 82nd Texas Legislature began as soon as the 81st Texas legislature ended. As most are aware, ABC of Texas did not bring a President on board until July of 2008, only six months before the 81st Texas Legislature started. That meant that the President had to focus on getting to know the members and the organization and preparing to try to advocate for the pre-selected ABC of Texas Legislative Priorities. Preparations optimally start well before that time.

ABC of Texas began preparing for the 82nd Texas Legislature first by recognizing our champions in the 81st Legislature. It cannot be over-emphasized how helpful it is for members of the Texas Legislature to know their extraordinary efforts are appreciated.

We also scheduled a Strategic Planning Session for Wednesday, September 30. This was especially important for the organization to decide what it wanted to be in the future. Prior to the 2009 session, the President had hastily prepared a Strategic Communications Plan for the Legislative Session. This time, the entire Board (plus an invited guest from each chapter) assembled to design a broader plan for the next 2 and 4 years. Since the Board will assemble in November to update and revise the Plan, I will only discuss our implementation of the goals for 2011.

The planning meeting set 4 Major Goals and 4 Potential Supplemental Goals.

Major Goals

- Increase influence in political arena
- Increase awareness of ABC of Texas to ABC members
- 8 chapters in State ABC
- Leader in identifying issues and building coalitions

Potential Supplemental Goals

- Maintain pro-business Legislature
- Increase influence with state agencies
- Pass 2 bills
- One year's reserves

Major Goals

Increase influence in political arena

ABC of Texas was able to become more involved in elections than ever before. The political action quadrupled in size and more members were involved in elections as volunteers. ABC PAC endorsed incumbent Texas Governor Rick Perry for re-election in the Fall of 2009 (well before the filing deadline), holding off the announcement until a unified endorsement could be secured from 3 major statewide construction associations. The announcement of the joint ABC of Texas, AGC-TBB and TCA

endorsement was held at TEXO headquarters in Dallas on December 13, 2009. As mentioned earlier in this report, ABC of Texas participated in 15 election contests where an incumbent Democrat was defeated by a Republican challenger. We were sought out by statewide elected officials for endorsements (Governor Rick Perry and Comptroller Susan Combs). ABC of Texas has become better recognized at the Texas Department of Licensing and Regulation and succeeded in having a Board member (Mark Roach) appointed to the Electrical Safety and Licensing Advisory Board to represent industrial and merit shop interests.

Increase awareness of ABC of Texas to ABC members

This one is harder to recognize. We have to rely on the chapters for most direct communication with members. The state office began circulating weekly reports to all Board Members and Chapter Presidents in late 2009. The purpose was to give chapters more tools to communicate about ABC issues. It is recognized that some chapters are reluctant to determine what might be politically sensitive. The State President has asked for Chapter Presidents to ask if they have a doubt. The State President uses VoterVoice during the session to communicate directly with ABC members to ask them to contact legislators. It may be a function of the issues, but fewer communications were directed back to legislators by this method this session than last. The State President remains willing to attend any chapter functions to which he is invited consistent with the travel budget.

8 chapters in State ABC

This goal appears beyond our control. In late 2010, at the request of the President of the Southeast Texas Chapter and after consulting with the ABC of Texas Board, the State President put together a list of reasons the chapter should join in the state efforts. ABC of Texas had made significant progress since that chapter had previously elected not to participate in state efforts. The Southeast Texas Chapter Board considered and rejected re-joining ABC of Texas. The State President believes we should move on and plan for a State ABC with 7 chapters. ABC of Texas made significant progress from 2008 to 2010. It needs to focus on improvement, not recruiting a reluctant chapter. If the chapter decides to re-join in the future, it will be welcome.

Leader in identifying issues and building coalitions

One of the first steps to becoming a leader is to demonstrate teamwork. To this end, ABC of Texas continues to partner with other industry associations, specifically AGC-TBB and TCA, to pursue initiatives and fight threats. As last session, ABC brought forth initiatives which were joined by other groups. ABC also participated actively in joint initiatives and the initiatives of others that benefitted our members. The State President was active in many coalitions and joint efforts in addition to construction industry issues. He worked with groups ABC of Texas participated financially in including Texans for Lawsuit Reform, Texas Employers for Immigration Reform, and Texas Conservative Coalition Research Foundation. ABC of Texas also cooperated with the Texas Civil Justice League, Texas Association of Business, Texas Society of Architects and Texas Council of Engineering Companies. In many cases, the State President was called upon to prepare one-pagers promoting legislation for circulation to the Legislature. And, representatives of several of our allies were invited to our Legislative Reception to meet ABC members.

Potential Supplemental Goals

Maintain pro-business Legislature

We did our share by working on our first Major Goal.

Increase influence with state agencies

This appears to be proceeding well. ABC of Texas is well-recognized at the Texas Department of Licensing and Regulation. As mentioned earlier, we now have a member on an advisory board.

Pass 2 bills

When the Strategic Planning meeting proposed this, it was before we were fully aware of the budget shortfall. Thus, the Board declined to propose solitary initiatives (Greater Houston Chapter brought 2 proposals, but the Board chose others over them). When the Greater Houston Chapter decided to proceed, it was apparent that ABC of Texas would have to take the lead on the bills. We recruited other associations (AGC-TBB and TCA) to support the bills. Ben Westcott of the Greater Houston Chapter both brought the issues forward and provided written materials and witnesses. More later.

One year's reserves

When the budget was adopted in November of 2010, while we were able to maintain sufficient resources, it was apparent that we might be short of a full year's reserves. Thanks to supplemental funding from TEXO in the form of voluntary additional dues for subscribing members and a sponsorship of the breakfast at Legislative Day, we will be very close to having one year's reserves at the end of 2011.

No legislative report would be complete without recognizing the efforts of ABC of Texas members who took time from their busy schedules to attend the reception held Tuesday, February 1, at the offices of ABC of Texas lobbyist Mike Toomey and the ABC of Texas Legislative Day activities on Wednesday, February 2—especially this year! Early on the morning of Legislative Day, there was freezing rain and sleet. The temperature dropped and the wind increased after our members went over to the Capitol to deliver materials. Their determination and dedication should be recognized.

Bob Parker, an ABC of Texas Board member from the Texas Coastal Bend Chapter, chaired a planning committee that provided invaluable assistance in planning the events. Ryan Baker, Project Manager from Flintco Constructive Solutions and an ABC member from the Central Texas Chapter, and two of his interns, assisted by helping prepare the packets to be used by ABC of Texas members to communicate ABC of Texas issues. Special guests included ABC Regional Manager April Brown. Our Speakers were State Senator Craig Estes of Wichita Falls and State Representative Todd Hunter of Corpus Christi (a member of the Texas Coastal Bend Chapter). Later that same day, Hunter was named Chairman of the powerful House Calendars Committee by House Speaker Joe Straus. We had approximately 110 ABC of Texas members in attendance both days (a 10% increase over last session). Legislative guests at the reception included 38 Texas House members, 2 State Senators, and about 20 staff members (actual Legislator attendance was up 25%). On Legislative Day, ABC of Texas members helped deliver chocolates with the ABC of Texas logo (surrounded by smaller chocolates in the shape of hard hats and hammers) and ABC of Texas folders with Issue Briefs to legislative offices. Last session, the attendees left approximately 60 packets and chocolates undelivered (delivered later by the State President). This session, only 40 packets were undelivered on Legislative Day (about 10% improvement which coincides with attendance).

It is also critical to credit those who took time from their busy schedules to testify on legislation. Of course, Bob Parker (an ABC of Texas Board member and member of the Texas Coastal Bend Chapter) again travelled to Austin twice to testify on the Indemnification legislation. Bob continues to be a valuable resource for ABC of Texas in the legislative process. ABC's State Chair, Andy Koebel, also travelled to Austin to testify on the State Breach of Contract legislation. Ben Westcott (a member of the Greater Houston Chapter) prepared materials for the two Greater Houston Chapter initiatives. Ben also secured witnesses for four different hearings. Those witnesses were Ben Westcott of Andrews Myer, Matt Moore of Andrews Myer, Tim Ross of

Porter Hedges (a Greater Houston Chapter member), and Matt Ryan of Allensworth and Porter (an Austin construction attorney).

Last session, we spent much of our time playing defense. This session, although the agenda was crowded, we spent much of our time pursuing initiatives. Our allies in those endeavors included TCA (Raymond Risk and Mike White, along with their lobbyists—Clint Hackney, Alan Burrows, Eric Woomer, Bob Kamm, and Dan Shelley), AGC-TBB (Mike Chatron and Corbin Van Arsdale, along with their outside lobbyist—Wade Long), Texas Society of Architects (TSA) (David Lancaster), and the Texas Council of Engineering Companies (TCEC) (Peyton McKnight). The Texas Association of Business (Bill Hammond, Cathy DeWitt, Kandice Sanaie), in addition to being helpful in TEIR efforts, was helpful on employment, pension, and general business issues.

We also used our outside lobbyist, who prior to the session was named the #1 Hired Gun in Texas by *Capitol Inside*, Mike Toomey, in a much more effective manner than in the past. There are no words to describe the amount of effort and strategic assistance put forth by Mike. He had to get involved in more issues for ABC of Texas than last session and did what we in the trade refer to as the “heavy lifting.” Just mentioning that Mike is your outside lobbyist commands immediate respect, and sometimes fear! This report could not be written without mentioning the invaluable assistance also provided by Mike’s office, particularly Janet Traxler and Jocelyn Burton. Janet not only has worked with ABC of Texas over the years, but she particularly enjoys passing along assignments from Mike to the State President (because she had to do some of these same assignments in the past!). Janet is very helpful in keeping Mike and the State President connected as well as helping secure resources from their office when needed. Jocelyn helped keep track of Mike and Janet and always had a smile in her voice. Both were very helpful during our Legislative Reception.

ABC of Texas Legislative Priorities

At the April 14, 2010, meeting of the ABC of Texas Board, the Board set the priorities for 2011. Initially those priorities in order were (number of votes in parentheses):

- Lien Law/Retainage (15)
- Alternative Delivery Systems (13)
- Workers’ Compensation (Third Party and CIPs) (12)
- Indemnification (12)
- Frivolous Lawsuits (8)
- State Sovereign Immunity (6)
- Exempting Industrial Contractors from Electrical Licensing (6)

Following discussions with potential allies and the original author of the electrical licensing bill, on November 18, 2010, the ABC of Texas Board replaced the Electrical Licensing Exemption issue with Immigration. It was apparent from the results of the elections that immigration issues would be more likely to pass in the 82nd Texas Legislature.

We also changed the names of some of the issues to better align with our advocacy. We changed the order of the Lien Law/Retainage issue to Retainage/Lien Law (to align with other advocates) and State Sovereign Immunity to State Breach of Contract (suggested by AGC-TBB for advocacy reasons).

The Greater Houston Chapter brought forth initiatives on Attorneys Fees for Lien Foreclosure and Prompt Pay Interest for Local Government Breach of Contract. TEXO kept ABC in the loop on a Public-Private Partnership initiative.

In addition, AGC-TBB had an initiative on Safe Schools (dealing with correcting a bad reference in existing law) and TCA had initiatives other than those on the ABC list dealing with Lien Waiver, Retainage/Trust Funds and Loan Default.

This section of the report will deal with those initiatives. Of course, ABC of Texas supported other bills in the process. Those will be dealt with in another section of this report.

Retainage/Lien Law

ABC of Texas Position: ABC of Texas supports addressing the conflicts between lien law deadlines and retainage payments, establishing a fixed date of completion, and providing meaningful notice of retainage being withheld from subcontractors and suppliers.

There are three significant problems for claimants trying to perfect mechanic's lien rights for retainage:

- Subcontractor must file its lien of record no later than 30 days after the prime contract is complete (the same time frame that is provided for the retainage to be paid).
- Final completion date may not be easy to determine.
- Early notice is required to be given to the owner. This notice has no constructive effect.

Preparation for this legislation began in early 2010 when TCA contacted both ABC of Texas and AGC-TBB to meet to see if legislation could be worked out. The first meeting was held on January 26, 2010. Participating on behalf of ABC of Texas were Andy Koebel (South Texas Chapter), Wes Johnson (South Texas Chapter), Mike Freeman (TEXO), Mark Roach (Texas Coastal Bend Chapter), and Jon Fisher (ABC of Texas). In the next several months, at least two more meetings were held in an attempt to work on language acceptable to all three groups. At the last meeting, when an outline was approved, AGC-TBB said it would likely not oppose the bill, but did not see enough in it for general contractors to be in support. Following that meeting, draft legislation was circulated and the ABC of Texas members indicated it was consistent with our agreement. Even before that, the ABC of Texas Board had selected this as our #1 issue for 2011.

Once the bill was introduced, it was discovered that there needed to be some changes to make sure it worked within the current lien law. Again, those changes were circulated and approved.

When the bill was heard in the House Business and Industry Committee on March 14, 2011, AGC-TBB registered opposition to the bill. Negotiations began anew in the office of House Business and Industry Committee Chairman and joint author, Rep. Joe Deshotel. More changes were made to try to satisfy opponents. At that time, there was discussion of an interim study on the entire lien law since many participants advocated a holistic approach instead of dealing with individual problems. The bill was subsequently voted out of committee on March 30 and set on the House Calendar for April 26 (the Tuesday after Easter).

Once the bill was set on the House Calendar, it became apparent that the bill as written would be strongly opposed by AGC-TBB (and others). An intramural floor fight among construction industry groups appeared imminent. Such an occurrence would cause long-lasting damage to industry relationships and likely result in a less receptive attitude to any of these groups' initiatives in the future. In a nutshell, it was likely we would all get punished.

At the strong insistence of Mike Toomey, AGC-TBB agreed to meet with TCA and ABC of Texas the Monday after Easter to try one more time to work out the bill. Of course, ABC of Texas and TCA had already prepared for an all-out floor fight if necessary. At the meeting, an AGC-TBB representative (Robert Bass of Winstead PC) proposed a solution that appealed to all the groups. The meeting had lasted less than 30 minutes, and we had a solution that everyone agreed was better than the original proposal! This compromise

also ended up being supported by the Building Owners and Managers Association and the Texas Land Title Association, both of whom had opposed the original bill.

The bill was delayed until Friday, April 29, to await a House Floor Substitute that incorporated the agreement reached at the April 25 meeting. It ultimately passed the House 139-7.

Since the bill had already been heard in the Senate Business and Commerce Committee, it was voted out of Senate Committee on May 10 and passed the Senate 31-0 on May 16.

HB 1390 by Reps. Joe Deshotel and Dwayne Bohac and Sen. Craig Estes

The final legislation changes the deadline for subcontractors to file liens for retainage to coincide with the deadline for general contractors (15th day of the 4th month after project completion) unless the owner elects to give everyone filing notice 30 days to file liens. The project completion date is certainly less important if there is a known deadline, even if it is only 30 days. This gives owners flexibility to close the project if there is a need. The bill also changed the deadline for filing a letter providing notice to the owner of retainage due from the 15th day of the second month after starting work to 30 days after work is complete.

Texas Governor Rick Perry signed the bill on June 17.

Alternative Delivery Systems

ABC of Texas Position: ABC of Texas supports HB 628 by Callegari. ABC of Texas believes that it is good public policy to provide uniformity in the way political subdivisions advertise and award contracts using alternatives to lowest bid. The process used by a political subdivision must be fair, consistent and open. A level playing field for all those submitting bids will result in the best possible outcomes for all involved and protects our free enterprise system.

Wow! Was this bill hard to pass! At one point, we began referring to this as “the snake-bit bill.”

The efforts to pass this legislation began long before ABC had a State President. In 2005 and 2007, similar legislation passed both houses and was vetoed by the Governor because it made changes dealing with design professionals that were unacceptable.

In 2009, another similar bill passed the Senate and was set on the Major State Calendar which usually makes it a sure thing. Opposition among House Democrats to a Voter ID bill (which was set on the Major State Calendar before this bill) killed it. The House Democrats seized an opportunity to begin “chubbing” (engaging in frivolous debate) the House Local and Consent Calendar which caused a last minute melt-down. Many bills set before Voter ID met the same fate.

Determined to try one more time, ABC of Texas, AGC-TBB, TSA and TCEC began efforts to work with the Center for Job Order Contracting Excellence (CJOCE), the only group identified in 2009 as having real problems with the bill, to address their concerns. We managed to work out an approach that resolved their major problems.

Then, along came new adversaries—purchasing cooperatives, local governments (including Texas Municipal League and the Council of Urban Counties including Harris County), and roofing contractors and roofing material manufacturers. We managed to work out a compromise with the roofing folks and some local governments. Then, the bill got hung up in the House Calendars Committee because the compromises with the CJOCE and the roofing folks still did not please the Texas Municipal League (an owner of a purchasing cooperative). We removed the offending language in order to save the bill. It got set on the House Calendar after the Texas Municipal League removed its objections. It passed 145-1. We believe we will get interim studies on two of the issues removed from the bill—use of interlocal contracts for construction services and use of public procurement statutes for quasi-governmental entities.

And, there were other storm clouds looming. Associated General Contractors—Highway, Heavy, Utilities and Industrial Chapter (AGC-HH) was trying to get HB 3607 (which ABC also supported) added on to HB 628 in the Senate. If AGC-TBB and ABC of Texas did not oppose this move by AGC-HH, the opponents of HB 3607 were preparing to go all-out to oppose the bill. They could have easily killed it this late. In fact, we came within hours of that occurring. Thanks to

quick action on the part of ABC of Texas and AGC-TBB, we assured the opponents of HB 3607 that we were steadfast in our resolve to keep the two issues separate.

But, we still weren't through with the problems. With time running out in the Senate, the bill was set for the very last day the Senate State Affairs Committee was scheduled to meet to consider House bills. It would be two more days before the bill was finally reported. It was assumed that was to wait for the House to set another Senate bill. We had been caught in last minute rivalries between houses (remember what was said earlier about stray bullets).

The bill was passed by the Senate 31-0 with 6 days left. Several amendments were attached—some of which had to be removed in conference committee or the bill might fail because of opposition by groups that had already removed their objections (these amendments could cause them to object again). The conference committee report was adopted on the next to the last possible day by the Senate and the last possible day for conference committee reports to be adopted by the House. The conference committee reported passed the Senate 31-0 and the House 145-0. Certainly, passing this bill was not as easy as the final vote made it look!

HB 628 by Rep. Bill Callegari and Sen. Mike Jackson

This bill was ABC of Texas' #3 priority last session and our #2 priority this session. We worked as one with three other groups. Although many improvements in current practices contained in the bill as filed were sacrificed to get the bill passed, the main purpose—consolidation of alternative delivery systems—was accomplished. We were also able to preserve a ban on reverse auctions and a provision to minimize frivolous lawsuits dealing with defects in school construction.

Texas Governor Rick Perry signed the bill on June 17.

Workers' Compensation (Third Party & CIPs)

ABC of Texas Position: ABC of Texas believes that recent court decisions upholding the principle of "statutory employer" are in the best interests of the state and the free enterprise system. ABC of Texas believes that where a worker is covered by Workers' Compensation, that Workers' Compensation should be the sole remedy.

Last session we had this issue combined with Indemnification. This session, the Board decided to break it up into two issues. Realistically, this issue could still be broken up into at least 2 more issues—see parentheses.

The main component of this issue involved maintaining the status quo on third party lawsuits. A corollary of that position was to seek opportunities to expand the concept of statutory employer or sole remedy for workers' compensation. To the latter end, ABC of Texas worked with Texans for Lawsuit Reform and the general business coalition (Texas Civil Justice League, Texas Association of Business, Texas Chemical Council, Texas Association of Manufacturers, Texas Oil and Gas Association, AGC-TBB, Association of Electric Companies of Texas, Texas Restaurant Association, etc.) over the interim to develop a Statutory Employer bill. There were mixed feelings among members of the group about pursuing the legislation for fear it could result in damage to the already-favorable court decisions. ABC of Texas continued to encourage discussion of the issue, seeking to make sure any decision was active, not passive.

We were surprised when Sen. Joan Huffman introduced SB 1784 which would establish the concept of statutory employer. We were told it was just to put the issue in play in case there was an opportunity to address it. There was never any real hope of advancing the legislation unless it was part of a larger compromise which never materialized. But, we count this issue as a success because we fulfilled the defensive part which was to lose no ground.

We really did not have a clearly defined position on consolidated insurance programs (CIPs), leaving it to the chapters to define support or opposition on individual bills based on our process for setting positions. Ironically, when the chapter voting came in on a more narrow CIP bill than we supported last session, the process yielded two conflicting results—support and neutrality. By our bylaws, a simple majority for or against a bill establishes a position. It takes a 2/3rd vote of neutral to be neutral. We got both. Assuming the intent of the bylaws would be that 2/3rd vote was controlling, we did not act on HB 2093 by Rep. Senfronia Thompson at the committee hearing. The bill was scaled back even further to be reported from committee. As reported, the bill only contained a requirement that when a CIP included general liability coverage, it must also contain at least 3 years of completed operations coverage. The bill passed the House in this form. (see next issue for a continuation of the narrative on this bill)

HB 2093 by Rep. Senfronia Thompson and Sen. Leticia Van de Putte

This bill contains a requirement that a CIP that provides general liability coverage must also provide at least 3 years of continued operations coverage.

Texas Governor Rick Perry signed the bill on June 17.

SB 1784 by Sen. Joan Huffman

This was the statutory employer bill. It was never heard in Senate Committee.

Indemnification

ABC of Texas Position: ABC of Texas supports SB 361 as filed.

A funny thing happened on the way to establishing an ABC of Texas position on a bill which was supported by our block voting system last session by a vote of 16-5. This time we supported the bill by the slimmest possible margin—10-9, with one chapter abstaining. Only 2 of 7 chapters had the same position that was reported last session. One can only imagine what grief that caused your State President—facing the potential of switching positions on a major piece of legislation that was still supported by the two other major commercial construction industry groups (AGC-TBB and TCA). There was considerable hand-wringing as the chapter votes reluctantly trickled in. The word “reluctantly” may not be the right word, but it did seem to take a long time.

Texas Civil Justice League (TCJL), which has been a party in negotiating the bill prior to last session, switched positions on the bill for this session.

In the Senate committee hearing on SB 361 by Sen. Robert Duncan, Bob Parker testified on behalf of the Texas Coastal Bend Chapter and your State President simply registered support. When TCJL testified, they were quizzed at length by the bills’s author about how they could negotiate a bill, support it one session and then oppose the negotiated bill the next session. When the bill was heard in House Committee (HB 2010 by Rep. John Smithee), Bob Parker testified on behalf of ABC of Texas since the dust had settled some. Although SB 361 had already reached the committee when HB 2010 was heard, it was decided that points of order might be easier to avoid if the House bill was heard and the Senate bill was reported by a formal meeting—fewer items in the committee report would make points of order more difficult. (By this time in the session, as mentioned earlier, many bills were being returned to committee to correct problems that resulted in points of order.)

But, the bill could never get the votes in the House Insurance Committee. As an aside, HB 2010 had originally been referred to the House Committee on Judiciary and Civil Jurisprudence, but as a courtesy to the

author who chaired the House Insurance Committee (where it also could have been referred), it was re-referred to the House Insurance Committee.

Undeterred, Sen. Robert Duncan waited for HB 2093 to reach the Senate floor where he attached key parts of SB 361 to the CIP bill. There were some very substantive changes in this version, however. A provision suggested by representative of the TCJL, but rejected by its Board, was included—the ability to negotiate post-claim joint defense agreements. This amendment also exempted municipal and residential projects. The bill passed to third reading in the Senate by a vote of 18-11. However, after the amendment was better explained to the members of the Senate, the bill passed by a vote of 26-5.

Then, a TCJL flier against the bill emerged showing a baby nursing on a mother's breast. Most did not know initially that this flier was not the "real" flier intended for distribution by TCJL. The real flier had a pacifier. But, the damage was done. Female members of the House were enraged, and TCJL and its leaders were taken to task publicly on the House floor.

Taking the high road, instead of moving for concurrence in Senate amendments while riding a wave of outrage (and to avoid points of order), Rep. Senfronia Thompson moved not to concur in Senate amendments and sent the bill to conference committee. The conference committee made minor changes, and the conference committee report passed the House 121-21 and the Senate 26-5.

Having worked on similar legislation since 1997 (and other bills dating back to the 1980's), the groups supporting the bill became determined to ensure that the Governor signed the bill. This issue simply did not need to keep hanging around. It had passed both houses overwhelmingly and created division among business groups and within our industry.

There was initial concern within the Governor's office about how owners and general contractors could protect themselves from lawsuits when the subcontractor was totally at fault. Currently, the subcontractors would defend everything (with attorneys from all the parties involved anyway). It was explained that the bill did not prohibit a requirement that contractors purchase an available product—Owners and Contractors Protective Liability Insurance—which would provide coverage.

SB 361 by Sen. Robert Duncan and **HB 2010** by Rep. John Smithee

The bills were virtually identical to the Senate bill that died last session on the House Major State Calendar. Ironically, the bill was ahead of Voter ID, indicating that it was intended to pass. This session, one of the original groups that negotiated the bill—TCJL—changed its position freeing up many owner groups to oppose the bill. HB 361 passed the Senate and died in House committee.

HB 2093 by Rep. Senfronia Thompson and Sen. Leticia Van de Putte

The CIP part of this bill was outlined in the previous issue. The Indemnification provisions, which were added in the Senate by Sen. Duncan, were an altered form of SB 361. There were several reasons for the alterations, but most were to eliminate opposition or address issues raised. As finally passed, the bill exempted employees, municipal projects and residential projects. It also allowed post-claim joint defense agreements.

Texas Governor Rick Perry signed the bill on June 17.

Frivolous Lawsuits

ABC of Texas Position: ABC of Texas supports efforts to introduce a higher degree of balance and accountability in our legal system by limiting unfounded claims and improving access for legitimate claims.

This legislation was an initiative of Texas Governor Rick Perry. Mike Toomey had indicated to us in the ABC of Texas Board meeting where priorities were being considered that a bill would be forthcoming. He indicated that both TLR and TCJL would be working on such a bill.

We all knew that we could get a stronger bill out of the House than out of the Senate. But, even in the House, the bill was changed from a strict “loser pay” to a stronger “offer of settlement” bill. What that means is that if the plaintiff refuses to take a legitimate offer and the award is not substantially the same or higher, the plaintiff must pay the defendant’s court costs. Thus, it does two things—it provides an incentive for defendants to make legitimate offers, and it provides an incentive for plaintiffs to take legitimate offers. Trying to incrementally save or incrementally increase awards could end up costing even the prevailing party money.

Once the bill got to the Senate, it became more important that a compromise be crafted—both for those who supported and those who opposed the bill.

The final bill allows courts to dismiss frivolous lawsuits more quickly, allows questions of law to go directly to appellate courts, allows plaintiffs seeking less than \$100,000 to request an expedited civil action, and encourages the timely settlement of disputes if there is a fair offer of settlement.

HB 274 by Rep. Brandon Creighton and Sen. Joan Huffman

This bill as passed represented a compromise among business interests, including TLR and TCJL, and the Texas Trial Lawyers Association.

Texas Governor Rick Perry signed the bill on May 31. The ABC of Texas State President was quoted in the press release.

State Breach of Contract

ABC of Texas Position: ABC of Texas supports efforts to require state governmental entities to abide by contracts by eliminating “sovereign immunity” for contracts.

Most of us were surprised when HB 1041 by Rep. Paul Workman was heard before the House State Affairs Committee. Following testimony, it became obvious that the bill had a lot of support in committee. ABC of Texas Chair Andy Koebel was present to testify on behalf of ABC of Texas and patiently waited most of the day to finally testify around 9:00 p.m.

The bill was reported only 6 days after being heard, but languished in the House Calendars Committee due to opposition which most likely came from universities.

It was also held up by a fiscal note (estimate of costs) which attributed “undetermined significant fiscal impact” to the measure. The fiscal note estimated it would take 5 ½ more attorneys to defend the state. That caused Mike Chatron of AGC-TBB to remark, “We knew this was a problem, but we didn’t know it was an epidemic!”

But, the story doesn’t end there.

Rep. Workman attached the bill to the House version of the Senate Fiscal Matters bill (the bill necessary to certify the appropriations bill). But, it did not make it into the conference committee report.

It was also attached to the fiscal matters bill in the First Special Session. Rep. Workman even had the House instruct conferees to retain the amendment in conference.

HB 1041 by Rep. Paul Workman and **SB 562** by Sen. Jeff Wentworth

Although neither was successful, HB 1041 was set on the House Calendar (almost last) and died because time ran out.

Immigration

ABC of Texas Position: If Texas chooses to impose requirements upon its contractors or any other employers, those requirements should only sanction employers who knowingly hire illegal aliens. There should be a safe harbor provision which prevents enforcement action for those who confirm employment eligibility status in good faith.

Most of us coming into the session believed that there would be a very real possibility of some sort of employer sanction bill. For that reason, some groups decided it would be better to help craft acceptable ones. To that end, working through Texas Employers for Immigration Reform (TIER), ABC of Texas identified two bills that could be acceptable if something had to pass. One created an affirmative defense when an employer did use federal procedures to verify status. The other totally exempted employers when they used federal

procedures. A version of the latter bill with penalties removed was reported from House committee late in the session. It was never set on the House Calendar—in fact, it was actually reported too late to be set.

It is important to note that many of those legislators who had filed onerous employer sanction bills in the past either put in an exception for those who checked status or an affirmative defense.

So, thanks to those in the House and Senate (and Governor's office) who understand that employer sanctions are not the way for the State of Texas to respond to the federal government's failure to secure our borders and to enact meaningful immigration reform.

HB 140 by Rep. Jodie Laubenberg

Required state contractors to use E-Verify—never heard in committee.

HB 177 by Rep. Jim Jackson

Required proof of citizenship or lawful presence to be issued certain occupational licenses and driver's licenses—never heard in committee.

HB 202 by Rep. Burt Solomons

Required state contractors to use E-Verify—heard in committee but not reported.

HB 296 by Rep. Leo Berman

Comprehensive bill that included employer sanctions—never heard in committee.

HB 601 by Rep. Jim Jackson

Mandatory E-Verify for all employers—never heard in committee.

HB 623 by Rep. Dennis Bonnen

Dealt with enforcement of immigration laws—heard in committee but not reported.

HB 763 by Jose Lozano and **SB 146** by Sen. Juan Hinojosa

Created an offense of unlawful transport of an undocumented person—House bill was never heard in committee; Senate bill passed the Senate, but was never heard in House committee.

HB 878 by Rep. Charlie Howard

Mandatory E-Verify—never heard in committee.

HB 1202 by Rep. Debbie Riddle

Employer sanction bill with residential exemption and exception for verification—heard in committee but not reported.

HB 1275 by Rep. Patricia Harless

License suspension for those knowingly employing undocumented workers with exception for those who checked status—heard in committee but never reported.

HB 1888 by Rep. Sid Miller

Mandatory E-Verify—never heard in committee.

HB 2450 by Rep. Jim Jackson and **SB 1254** by Sen. John Carona

Employer sanction bill with affirmative defense—House bill was never heard in committee; Senate bill was heard in committee but not reported.

HB 2878 by Rep. Leo Berman

Created a cause of action for the state, and a private cause of action if the state chose not to sue, against those employing or contracting with undocumented workers—never heard in committee.

HB 3129 by Rep. Four Price

Mandatory E-Verify—never heard in committee.

HB 3240 by Rep. Yvonne Davis

Mandatory E-Verify—never heard in committee.

HB 3252 by Rep. Warren Chisum

Employer sanction bill without sanctions that had an exception for those employers who checked status—reported from committee on the last day for House bills to be reported from committee—effectively too late to be set on the House Calendar.

HB 3667 by Rep. Aaron Pena

Employer sanction bill very similar to HB 3252 was introduced—never heard in committee.

SB 84 by Sen. Jane Nelson

Mandatory E-Verify for government contractors—never heard in committee.

SB 394 by Sen. Dan Patrick

Created an offense of unlawful transport of undocumented person—never heard in committee.

Greater Houston Chapter Initiatives

Although considered by the ABC of Texas Board when it set priorities, the Greater Houston Chapter decided to proceed with two initiatives. Ben Westcott of the Greater Houston Chapter provided considerable written resources and secured witnesses. ABC of Texas wrote the bills, secured authors, monitored committee hearings, notified Ben when witnesses were needed, drafted and circulated amendments to remove objections, and generally made sure the bills were passed.

HB 345 by Rep. Tim Kleinschmidt and Sen. Jeff Wentworth

This bill specified that prompt pay interest was included in “interest as allowed by law” when local governments breached contracts. The bill was reported by the House Judiciary and Civil Jurisprudence Committee on March 14 (very early), but was not set on the House Calendar until April 18 after the State President made a concerted push to get the bill set. It was obvious that some group was holding the bill in the House Calendars Committee. When the bill was set for consideration in the Senate, the Texas Municipal League contacted the Senate author at 4:00 p.m. the afternoon before at 9:30 a.m. hearing (the group we suspected). An amendment was suggested that would limit interest to prompt pay interest. After several different amendments were suggested by ABC of Texas (as approved by Ben Westcott), the bill was amended and reported from committee. The amendment that was added did not damage the bill. It passed the Senate and the House concurred in Senate amendments.

Texas Governor Rick Perry signed the bill on June 17.

SB 539 by Senator John Carona and Rep. Tim Kleinschmidt

This bill dealt with attorneys fees in lien foreclosures and lien removals. Current law was permissive; the bill made it mandatory. Provisions were retained which gave the judge discretion to allow “reasonable attorneys fees as are equitable and just.” The Senate bill literally flew out of the Senate—passing on the Local and Uncontested Calendar on March 17. The House bill moved quickly also being reported from the House Business and Industry Committee on March 25. It was set on the House Calendar for April 4. It was postponed 3 times waiting for the Senate bill to be referred and reported from House committee (making it eligible to be substituted on the House floor for HB 346—the House companion). When HB 539 was considered on the House floor, Rep. Craig Eiland and Rep. Larry Phillips wanted to make sure that the bill did not affect “innocent” homeowners. An amendment was accepted keeping the attorneys fees permissive in residential matters. The Senate concurred in House amendments on May 2.

Texas Governor Rick Perry signed the bill on May 12.

TEXO Initiative

Although this bill was mentioned multiple times at ABC of Texas Board meetings, we didn't have a chance to circulate it until it was introduced. When it got to that point, there were some problems with the version drafted by the Legislative Council.

ABC of Texas worked with AGC-TBB to review their changes and with Greater Houston Chapter ABC member John Marshall of Satterfield and Pontikes. The initial AGC-TBB amendments resolved most of the concerns. There was a later concern about bonds that was resolved when the bill got to the House floor.

There was some concern among ABC Chapters that this bill was either encouraging more of these type projects or creating too much bureaucracy. Our process yielded support once the AGC-TBB amendments were adopted.

SB 1048 by Sen. Mike Jackson and Rep. John Davis

As finally passed, this bill sets up a voluntary mechanism for governmental entities (that decide by resolution to use this process) to engage in public-private partnerships for qualifying projects. The proponents of this approach hope that by specifying this process in statute, it will be the process used for the majority of these type projects in the future.

Texas Governor Rick Perry signed the bill on June 17.

TCA Initiatives (other than those above)

TCA began the session with 6 initiatives. Three of those were also ABC priorities—Retainage/Lien Law, CIPs and Indemnification. The other 3 (all of which ABC of Texas supported) were Retainage/Trust Funds, Lender Notice, and Lien Waiver.

The three that TCA shared with ABC of Texas are discussed above.

The only one of the other three that passed was Lien Waiver.

HB 1456 by Rep. Rob Orr and Sen. Bob Deuell

This legislation provided for forms specified in statute to be used to conditionally and unconditionally waive liens.

Texas Governor Rick Perry signed the bill on June 17.

HB 1428 by Rep. Joe Deshotel and **SB 1425** by Sen. Jeff Wentworth

This legislation was supported strongly by ABC of Texas, AGC-TBB and TCA. It would have provided a way to make sure that funds being retained ended up as trust funds where the funds could be accessed in case of owner default or foreclosure by a lender. Current practices are for a lender to only forward those funds due less retainage which results in the retainage being withheld by the lender, not retained by the owner. Practically, that allows retainage to protect the owner without benefitting the contractors in cases where a default or foreclosure occurs. The House bill died in the House Calendars Committee. The Senate bill passed the Senate and died on the House Calendar when time ran out.

HB 3040 by Rep. Chisum and **SB 1173** by Sen. Bob Deuell

We knew going into this session that the Texas Bankers Association (TBA) strongly opposed this bill. TCA, AGC-TBB and ABC of Texas all met with representatives of this group prior to the session to ask them to help us work on a mutually-acceptable solution. TBA declined to engage in working on a solution. The House bill was reported from the House Business and Industry Committee, but died in the House Calendars Committee. The Senate bill was never heard in committee.

AGC-TBB Initiatives (other than those above)

AGC-TBB had 10 Legislative Issues this session. Six of those were shared in some form with the ABC of Texas Legislative Priorities. The failure to repeat those is not an indication that AGC-TBB did not have a full agenda—it is a reflection of the fact that the agenda items were shared among the groups. AGC-TBB was lead on Alternative Delivery Systems and State Breach of Contract and one of the original negotiators on Indemnification. They also were concerned about CIPs, Immigration and Workers' Compensation.

The other 4 AGC-TBB issues were Arbitration, School Background Checks, Sales Tax on New Construction and Post-Award Bid Changes. Two of these were defensive—Arbitration and Sales Tax—and the Post Award Bid Changes bill was not filed.

HB 398 by Rep. Jim Jackson and **SB 1042** by Sen. Glenn Hegar

This bill fixed a bad reference in the school background check law for contractors. Both bills passed both houses. ABC of Texas supported both bills.

Texas Governor Rick Perry signed both bills on June 17.

Other Legislation of Interest to ABC of Texas Members

Around 150 bills were circulated to Chapters for positions. This session, they were broken into 3 lists—the first list was bills we really needed input on; the second list was bills we believed we supported; and the third list was bills we believed we opposed. Although there were some anomalies in the second and third lists, generally we were correct in those assessments.

Below is a sample, in bill number order, of bills that ABC of Texas acted on in some capacity this session other than those already covered. This list is not exhaustive, it is meant to give the reader an idea of the variety of issues that have to be reviewed.

Whenever ABC of Texas is going to oppose a bill, the State President generally notifies the author or his or her staff of ABC's intentions. That does two very important things. First and foremost, it shows respect and courtesy to the member—they are elected officials (one never knows when that courtesy may be important); and, second, it gives the author a chance to communicate why the bill was filed. Sometimes, our perspective may not consider all the public policy implications, and the additional information could change our opinion (it could happen!).

HB 40 by Rep. Jose Menendez

ABC of Texas opposed this bill which dealt with collective bargaining for firefighters and police by allowing unions to begin to collectively bargain when meet and confer agreements expire. The bill was never heard in committee.

HB 51 by Rep. Eddie Lucio and Sen. Juan Hinojosa

ABC of Texas chapters voted to oppose this bill, which was similar to another bill ABC had supported last session. This bill had been long-sought by ABC allies (the Texas Society of Architects) so ABC elected to not engage since the architects are charged with compliance and are familiar with how the bill will be implemented. On a related matter, ABC of Texas has a member (Roger Berry of the Greater Houston Chapter) on a state government-funded study to try to secure alignment of the varying local requirements for energy efficiency and other green building initiatives. This bill was signed by Texas Governor Rick Perry on June 17.

HB 131 by Rep. Carol Alvarado

ABC of Texas would have opposed this bill had it ever been heard. It required construction contractors on state projects to provide health insurance equivalent to state workers.

HB 198 by Rep. Tan Parker

This bill dealt with a process for using private procurement specialists for large state agency contracts. With the assistance of Jack Baxley of TEXO, ABC of Texas negotiated an exemption for construction (the bill was designed primarily to deal with information resources contracts).

HB 432 by Rep. Armando Walle

ABC of Texas would have opposed this bill had it been heard. It dealt with additional licensing requirements for air conditioning technicians.

HB 471 by Rep. Doc Anderson

ABC of Texas supported this bill intended to make card check illegal in Texas. The bill was reported out of committee, but died in the House Calendars Committee.

HB 507 by Rep. Angie Chen Button

ABC of Texas supported this bill which changed certain notice requirements to give school districts more flexibility to use internet notice. It still preserved some newspaper notice. The bill was reported from House committee, but died in the House Calendars Committee. The Texas Daily Newspaper Association generally opposes anything that decreases their revenue.

HB 560 by Rep. Wayne Christian

ABC of Texas would have opposed this bill had it been heard in committee. It would have made it harder to get electronic textbooks and other alternative instructional materials approved.

HB 662 by Rep. Eddie Rodriguez

ABC of Texas opposed this bill in committee. HB 662 would have expanded county authority to regulate land use and allowed the establishment of buffer zones. It was heard, but never reported.

HB 679 by Rep. Angie Chen Button and Sen. John Carona

ABC of Texas supported this bill which allows local governmental entities to designate an employee to approve change order requirements up to \$50,000 (previous limit was \$25,000). This bill was signed by Texas Governor Rick Perry on June 17.

HB 800 by Rep. Doc Anderson

ABC of Texas supported this bill which was designed to address some potential and actual abuses in interlocal contracts dealing with roofing services. The House committee reported a scaled-down bill that only

prohibited the use of materials from a company that designed bid specifications or requests for proposals for a purchasing cooperative. This was the last bill considered by the House on its last day for House bills (May 13) and fell victim to chubbing and a dubious point or order that delayed consideration until after midnight. The bill was added as an amendment to HB 628, but removed in conference committee because of a previous agreement. Had the amendment not been removed from HB 628 (ADS), it could have caused HB 628 to fail.

HB 958 by Rep. Paul Workman and **SB 561** by Senator Jeff Wentworth

ABC of Texas supported this bill dealing with a diminishing statute of repose. The bill was heard in House committee, but not reported. It was never heard in Senate committee.

HB 1142 by Rep. Sylvester Turner

ABC of Texas opposed this fire protection sprinkler licensing bill. This bill has historically been opposed by ABC. It was never heard in committee.

HB 1277 by Rep. Ryan Guillen

ABC of Texas would have opposed this bill requiring excavation equipment to have a “dial before you dig” decal. It was never heard in committee.

HB 1370 by Rep. Paul Workman

ABC of Texas would have supported this Texas Construction Academy bill had it been heard in committee.

HB 1447 by Rep. Dawnna Dukes

ABC of Texas opposed this City of Austin meet and confer bill. It was heard in committee, but not reported.

HB 1497 by Rep. Donna Howard

ABC of Texas opposed this bill that would have tried to guarantee career and technical education funding to junior colleges to the detriment of high schools. This bill failed on the floor of the House.

HB 1650 by Rep. Chuck Hopson

ABC of Texas opposed this bill in House committee. It would have given a preference for bidders whose bids included certain tree-derived building materials from resident bidders. It was heard but not reported.

HB 1652 by Rep. Roberto Alonzo

ABC of Texas opposed this bill which would have expanded collective bargaining for firefighters and police. The bill was heard in committee, but not reported.

HB 1656 by Rep. Yvonne Davis

ABC of Texas opposed this domestic steel preference bill. It was reported by House committee, but died in the House Calendars Committee.

HB 1711 by Rep. John Davis and Sen. Mike Jackson

ABC of Texas had concerns about this disaster remediation contractors bill. Of course, we couldn't have had better authors to understand and protect our interests. We worked with the authors to review some of the changes which improved the bill. Of course, even initially it was much better than another bill last session that required registration (which we generally oppose). The main provision of this bill is that contractors doing

disaster remediation cannot require full or partial payments before beginning work. It prohibits partial payments that are not proportionate to work performed (including materials delivered). Violations are subject to the Deceptive Trade Practices Act. The bill, however, exempts contractors doing business in their own or adjacent counties where the contractor has had a physical business presence for at least a year (local contractors). This bill was aimed at the very real problem of unscrupulous contractors coming in from other locations after a disaster (like a hurricane), getting up front payments, and then disappearing back to whence they came (usually another state). Bills like this are not optimal, but when they focus on a very real problem, it is best to try to deal with those problems.

HB 1739 by Rep. Armando Walle and **SB 938** by Sen. Eddie Lucio

ABC of Texas did not get enough chapters to weigh in to be certain if we would oppose or support these bills, which, like HB 1987 (which we did support), mandated workers' compensation coverage in the construction industry. The House bill was heard but not reported from committee. The Senate bill was never heard.

HB 1747 by Rep. Marc Veasey

ABC of Texas opposed this bill that dealt with retaliation as an unlawful employment practice. The bill was heard in House committee but not reported.

HB 1827 by Ruth McClendon

ABC of Texas opposed this bill (and several others like it) that required employers to give employees time off for various activities. This one happened to be for school activities. Employers should try to accommodate the outside lives of employees when possible, but it is not the government's role to mandate it. The bill was heard in House committee but never reported.

HB 1847 by Rep. Joe Farias

ABC of Texas would have opposed this bill increasing fees for the disposal of construction or demolition waste if it would have gotten a hearing.

HB 1853 by Rep. Mike Hamilton and **SB 1748** by Sen. Mario Gallegos

This was the "compromise" fire protection sprinkler bill. The House bill was set on the Local and Consent Calendar and withdrawn. Once the bill passed the House, it was set but not heard in Senate committee even though the Senate bill had been reported previously. It did not pass.

HB 1860 by Rep. Joe Deshotel

This bill was introduced to resolve a problem that title companies have with removable in dealing with mechanics liens. After the filed bill dealing with removables was severely criticized by the construction industry (including ABC of Texas), several construction attorneys worked with the title company attorneys to craft a bill that was more acceptable. The bill was reported from committee and died in the House Calendars Committee. The title companies asked us to include this on HB 1390, and we told them we weren't even putting our own bill (HB 1428 and SB 1425) on HB 1390. They tried (unsuccessfully) to attach it to HB 1456. Look for this issue to come back next session. If we still have problems, we need to fix the bill. The title companies ended up helping us on HB 1390.

HB 1987 by Rep. Paul Workman

ABC of Texas supported this mandatory workers' compensation bill for the construction industry. It was heard but not reported by House committee.

HB 2530 by Rep. Ken Legler and **SB 1399** by Sen. Dan Patrick

ABC of Texas had serious concerns about this bill which would have licensed foundation repair contractors. For one thing, these authors do not normally carry regulatory bills! Turns out there are real problems in residential construction by dubious firms. ABC of Texas asked the Senate author to exempt nonresidential foundation repair contractors (which he did). The House bill was heard in House committee, but the Senate bill passed the Senate and was reported by House committee. It died in the House Calendars Committee.

HB 2641 by Rep. Lon Burnam

ABC of Texas opposed this bill which would establish a civil cause of action for deprivation of rights. The bill was heard but not reported from House committee.

HB 2767 by Rep. Mark Strama

ABC of Texas opposed this bill which would regulate parking of construction equipment. It was a little sensitive because a constituent of Rep. Strama was promoting this bill because the constituent lost his son when his son's motorcycle left the road and impacted construction equipment. The bill was heard but never reported by House committee.

HB 2986 by Rep Tan Parker

ABC of Texas supported this bill which would have required unions with political action committees to raise those funds voluntarily from its members instead of lumping them in with union dues. It was never heard in House committee.

HB 2989 by Rep. Joe Deshotel

ABC of Texas did not have a position on the Workplace Fraud Prevention Act (dealt with requiring construction employees and contractors to be "properly" designated). Only one chapter replied in time for the hearing, and that chapter was offset by another chapter that initially said they were for the bill. The latter chapter ended up saying they were opposed...after the bill was heard in House committee. The bill, which was opposed by the Texas Association of Business and National Federation of Independent Business, was reported but never set by the House Calendars Committee. The witness list for the bill read like a Who's Who of Texas labor unions.

HB 3604 by Rep. John Smithee

ABC of Texas would have supported this bill prohibiting additional insureds had it ever been heard in committee.

HB 3607 by Rep. John Kuempel

ABC of Texas supported this bill dealing with construction managers-at-risk used by local governments. It was introduced at the request of Associated General Contractors of Texas (Highway, Heavy, Utilities and Industrial Branch) (AGC-HH). While ABC of Texas supported the bill, ABC could not support adding the bill to HB 628 (which AGC-HH tried) for fear it would kill that bill. Of course, this put AGC-TBB in the position of opposing a move of AGC-HH. Both ABC of Texas and AGC-TBB had to demonstrate resolve to keep this bill out of HB 628 or HB 628 would likely not have passed.

SB 280 by Sen. Wendy Davis

ABC of Texas would have opposed this bill dealing with discrimination in payment of compensation had it ever gotten a hearing.

SB 321 by Sen. Glenn Hegar and Rep. Tim Kleinschmidt

ABC of Texas Chapters unanimously supported this bill which would prohibit employers from prohibiting employees from legally carrying guns in parked cars on the employer's premises.

SB 425 by Sen. John Carona and Rep. Kelly Hancock

ABC of Texas chapters did not provide enough feedback to establish a position on this bill which dealt with certificates of insurance. A member of the Central Texas Chapter Board, Bubba Sikes, had the Independent Insurance Agents of Texas (IIAT) contact ABC to review this legislation. Bubba is also a member of that group. ABC of Texas and AGC-TBB met with the IIAT staff to make sure the legislation was flexible enough to accommodate the needs of some of our members who were concerned. Texas Governor Rick Perry signed the bill on June 17.

SB 671 by Sen. Mario Gallegos

ABC of Texas would have opposed this bill creating a state OSHA had it gotten a hearing in Senate committee.

SB 1244 by Sen. John Carona and Rep. Mike Hamilton

ABC of Texas had serious concerns with this bill dealing with air conditioning licensing. The bill as introduced made changes in some of the criteria for existing licenses. The Senate committee substitute, which was supported initially by the Texas Air Conditioning Contractors Association (TACCA), created a three tiered licensing structure that, despite being negotiated by the TACCA, did not retain support of the TACCA Board after members began objecting. ABC of Texas worked with the Texas Department of Licensing and Regulation to attempt to revive some provisions the agency wanted, using that opportunity to ask that National Center for Construction Education and Research (NCCER) language dealing with apprenticeship programs be inserted in the House Committee Substitute (which eliminated the objectionable provisions). The bill died after being removed from the House Local and Consent Calendar.

SB 1620 by Sen. Robert Duncan and Rep. Jimmie Don Aycok

ABC of Texas supported this bill which set up a process for certifying career and technical education courses as meeting science and math requirements of the 4 X 4 curriculum requirements. NCCER courses would qualify under this law provided they met the Texas Essential Knowledge and Skills (TEKS) requirements. Texas Governor Rick Perry signed the bill on June 17.

SB 1714 by Sen. Robert Duncan and Rep. Warren Chisum

ABC's chapter voting process did not yield a conclusive result (only 5 chapters responded—2 for; 2 against; 1 neutral) about this bill meant to close a loophole in workers' compensation created by a court case. Many of the tort reform groups discussed this bill prior to the session and declined to weigh in because this court decision could have the effect of weakening the workers' compensation system. Texas Governor Rick Perry signed the bill on June 17.

Acknowledgements

(no particular order)

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 - Russell Hamley—Greater Houston
 - David Ford—Central Texas
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 - Terry McAlister—Texas Gulf Coast
 - Kathy Autry—Texas Mid Coast
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Bills Introduced and Passed

The chart below shows a comparison of bills introduced and passed in the last two sessions.

You will note that there were fewer bills introduced and passed this session. I've tried to figure out why that is the case. Certainly, the reason there were fewer passed is that the agenda was crowded (mentioned in opening). The reason that fewer were introduced in the House could be that freshmen House members do not have a backlog of unresolved issues based on legislation that was introduced in previous sessions and not passed (slightly offset by new ideas those freshmen may bring to the process). Why the Senate introduced less bills is a mystery to me, although likely caused by the same phenomenon (Senators frequently are asked to carry companions to House bills—freshmen House members do not seem to do that with the same frequency as veterans).

82nd LEGISLATURE STATISTICS

*There are reserved numbers which is why the total count doesn't match the last number

Bill Type	2011			2009			Filed		Passed	
	Filed	Passed	%	Filed	Passed	%	+/-	%	+/-	%
House Bills	3865	797	20.6%	4836	867	17.9%	-971	-20.1%	-70	-8.1%
Senate Bills	1931	582	30.1%	2583	592	22.9%	-652	-25.2%	-10	-1.7%
House Joint Resolutions	154	3	1.9%	140	9	6.4%	14	10.0%	-6	-66.7%
Senate Joint Resolutions	53	8	15.1%	50	0	0.0%	3	6.0%	8	100.0%
House Concurrent Resolutions	173	101	58.4%	285	203	71.2%	112	-39.3%	-102	-50.2%
Senate Concurrent Resolutions	60	41	68.3%	86	55	64.0%	-26	-30.2%	-14	-25.5%
Totals	6236	1532	24.6%	7980	1726	21.6%	-1744	-21.9%	-194	-11.2%