



## TEXAS LEGISLATIVE REPORT

April 29, 2011

By Barbara Douglas, LAT Executive VP

### BIG PICTURE –

There are thirty-two days left in the 82nd Regular Session, which adjourns May 30, 2011.

**LAT's lien waiver bills** (*now in committee substitute form*) **HB 1456** by Orr, and **SB 1332** by Deuell, continue to be amended by LAT, TCA and the TAB (Builders). It's taken a lot of work to keep this on the right track to benefit suppliers as the bill originally intended. The House version is in Calendars, hopefully headed to the House in the next week.

**HB 2482, the organized retail theft bill**, has made it through the House and is set to be heard soon by the Senate Criminal Justice Committee. Please contact the committee members listed below if they represent you and request their support of this bill - **ESPECIALLY** if you have been affected by the shingle thefts over the past two years – LAT has provided testimony regarding these thefts to legislators.

**Chair:** Sen. John Whitmire  
**Vice Chair:** Sen. Joan Huffman  
**Members:** Sen. John Carona  
Sen. Rodney Ellis  
Sen. Glenn Hegar  
Sen. Juan Hinojosa  
Sen. Dan Patrick

**The Texas Civil Justice League (TCJL)** is tracking the following bills, some of the more than 650 bills total they are following. I've pared that down to be more specific to LAT member interests.

**SB 321** by Hegar, the "**guns at work**" bill, is also in Calendars, may be considered on the House floor as early as next week. TCJL is very concerned about the lack of liability protection for employers in the current proposal. Once a firearm leaves a vehicle, the employer becomes liable. The bill allows concealed handgun license (CHL) holders or anyone with lawful ownership of a firearm to carry a gun on an employer's premises as long as they do not enter a building. The legislation also includes a gross negligence exception, which will result in years of litigation. **Companion SB 321** by Hegar.

**SB 1160** by Seliger, the **trespasser liability bill** was favorably reported out from the House Judiciary and Civil Jurisprudence Committee. Other bill updates supported by TCJL are:

**HB 274** by Creighton (**governor's bill**) Relating to attorney's fees, early dismissal, expedited trials, and the reform of certain remedies and procedures in civil actions, was reported favorably as substituted.

**HB 2031** by Madden Relating to the establishment of a voluntary compensation plan as an alternative to litigation was reported favorably as substituted.

**HB 2661** by Kleinschmidt Relating to settlement of certain civil actions, was reported favorably as substituted

**SB 1160** by Seliger Relating to the liability of a landowner for harm to a trespasser was reported favorably without amendments. Companion: H.B. 1971 by Jackson

**HB 2010** by Smithee Relating to indemnification provisions in construction contracts, left pending in committee.

**Companion SB 361** by Duncan referred to Insurance committee

### SENATE –

The Senate approved Sunset bills for the **Texas Department of Transportation**, the **Public Utility Commission**, and continues the **Office of Public Utility Counsel**, the **Electric Reliability Council of Texas** (ERCOT), and the **Texas Water Development Board**.

*Continued...*

## HOUSE –

The House also heard several Sunset bills last week, including the sunset bill for the **Division of Workers' Compensation**, and continues the office until 2017.

**HB 150** by Burt Solomons, the **House redistricting** bill was passed to engrossment as amended.

## BUDGET –

The Senate Finance Committee voted out **SB 1811** by Robert Duncan (R-Lubbock) which identifies 20 items adding up to \$4.8 billion in additional revenue lawmakers can use to help fund the state budget. It includes deferral of payments including moving state payments to the public education system from August to September and moving forward tax collection dates for sales and franchise taxes; liquidating funds; sale of state properties; changing the tax method for small cigars; and reversing the Blue Cross/Blue Shield court decision.

The committee also voted out its version of **HB 1**, the **general appropriations bill**. The Senate version appropriates approximately \$12 billion more in state and federal funds than the House version. It includes an additional \$5.7 billion for public education; smaller cuts to nursing home reimbursement rates, textbook funding, additional money in the TEXAS Grants program; and \$2 billion in additional funding for transportation. The Senate bill included a provision that \$3 billion from the Rainy Day Fund could be used if growth in the state's revenue is not sufficient to fund appropriations made by the bill.

## GENERAL BUSINESS –

The **House State Affairs Committee** met April 28 to take up **HB 1275** by Patricia Harless (R-Houston) would require **suspension of the professional licenses of employers** that knowingly employ illegal aliens.

**HB 2990** by Joe Deshotel would provide that the prohibition on using electronically readable information from a drivers' license would not apply to information used as part of a transaction initiated by the license holder to provide information to a **check services company or fraud prevention services company** governed by the Fair Credit Reporting Act. *It was reported favorably from the House Homeland Security and Public Safety Committee and is currently in Calendars.*

**HB 1390** by Joe Deshotel (D-Port Arthur) would require **notice from a subcontractor of a potential retainage lien** to be delivered after completion, as opposed to coming at the start of work on a project. *It is postponed as of 4/28.*

### – Passed the House:

**SB 439** by Leticia Van de Putte would eliminate employer unemployment compensation charge backs for employers that reinstate a **qualified uniformed service member** with reemployment rights and benefits. *It passed the House on the Local and Consent calendar.*

**HB 1529** by Sid Miller would include a person's social security number or other government-issued identification number in the definition of "identifying information" for purposes of the **fraudulent use or possession of identifying information** statute. *It was engrossed and received from the House 4/27.*

**HB 2482** by Aaron Pena would make **organized retail theft** a Class B misdemeanor if the total value of the merchandise is less than \$500 and a Class A misdemeanor if the value is between \$500 and \$1,500. Current law provides state jail felonies for merchandise over \$1,500. *It was engrossed and received from the House 4/27.*

**HB 268** by Harvey Hilderbran would authorize owners of land used as a farm or ranch to apply to the comptroller for an exemption number for use on an exemption certificate for purchase of **agricultural items**. *The committee substitute was adopted by the House and sent to Senate Finance.*

*Continued...*

## **SALES TAX –**

The **House Ways and Means Committee** met April 26 on several bills, including:

**HB 98** by Ken Paxton would change the calculation for the **E-Z computation** to subtract out federal income taxes paid; subtract \$1 million; and set the rate at 0.25% if the balance is \$1 million or less and at 0.5% if the balance is more than \$1 million. *Left pending*

**HB 932** by Ken Paxton would exempt businesses from the franchise tax if its entire business during the period on which **margin is zero** or less. *Left pending*

**HB 1439** by Leo Berman would **define taxable income** for corporations as the amount reportable as taxable income on line 30 of IRS Form 2210; for partnerships, the amount reportable as ordinary business income or loss on line 22 of IRS Form 1065; and for other taxable entities a substantially similar amount determined by the comptroller; and would exempt from the margins tax entities whose taxable income is zero or less. *Left pending*

**HB 2171** by Raul Torres would institute a \$500 credit for the **employment of persons with a disability** or veterans of the United States armed forces. *Left pending*

**HB 2782** by Bill Callegari would institute a **sales tax holiday for firearms, hunting equipment**, ammunition, and firearm or hunting accessories the second weekend in October. *Left pending*

## **WORKERS' COMPENSATION –**

Last week, the **House State Affairs Committee** took up:

**HB 1739** by Armando Walle would **require both contractors and subcontractors to provide workers' compensation insurance** for all respective employees on any construction project. *Left pending.*

**HB 1987** by Paul Workman would require both **contractors and subcontractors** to provide workers' compensation insurance for all respective employees on any construction project; and would address the Entergy decision by excluding from this coverage requirement any direct employees of a property owner performing work on a construction project on the property owner's property. *Left pending*

### **– Passed the House:**

**HB 1774** by Larry Taylor would continue the **Office of Injured Employee Counsel** through 2017 and require OIEC to adopt alternative dispute resolution policies and establish a complaint response system. *The committee substitute and one floor amendment were adopted.*

**HB 2605** by Larry Taylor is the **sunset bill for the Division of Workers' Compensation**. *The committee substitute and 12 floor amendments were adopted.*

### **– Passed the Senate:**

**SB 511** by Leticia Van de Putte would allow an injured **employee to request a medical examination** from the treating doctor or referral doctor to determine any issue a designated doctor may review if the designated doctor's opinion is the employee's first medical examination to resolve an issue and the employee is not satisfied with the designated doctor's opinion. *The committee substitute was adopted.*

**Additional information can be obtained via the Senate, House, and capitol websites:**

[www.senate.state.tx.us](http://www.senate.state.tx.us)

[www.house.state.tx.us](http://www.house.state.tx.us)

[www.capitol.state.tx.us](http://www.capitol.state.tx.us)