



## AGC-Texas Building Branch

### Legislative Priorities 2023

1. Placing risk/liability on Owners (not on Contractors) for Owner-caused delays on public projects - **SB 803 (Hughes), HB 2265 (Leach)**
2. Support funding for vocational/trade/workforce development in ISDs, community colleges, and Texas State Technical College/Lamar Institute of Technology - **SB 1 (Huffman), HB 1 (Bonnen), several other bills**
3. Fix FBI/DPS issue re: accessing criminal history record information for construction employees on ISD projects – **SB \_\_\_\_\_, HB \_\_\_\_\_ (DPS/TEA bills)**
4. Fix certificate-of-merit insurance dilemma for third-party claims on design-build projects - **SB \_\_\_\_\_, HB 2007 (Martinez)**
5. State pre-emption of local, anti-contractor ordinances (business coalition effort of several trade associations) – **SB 814 (Creighton), HB 2127 (Burrows)**
6. Creation of specialty courts for business-to-business litigation, corporate governance, and suits involving state agencies (Texans for Lawsuit Reform “TLR” initiative – business coalition effort of several trade associations) – **SB 27 (Hughes), HB 19 (Murr); SB 1045 (Huffman), HB 3166 (Murr)**



## Owner-caused delays on public construction projects

SB 803 by Chair Bryan Hughes, HB 2265 by Chair Jeff Leach

### AGC Supports

#### Background

Contracts only work if the contract terms are mutually enforceable by both parties. Recently, several governmental entities have insisted on contract provisions that make the construction contractor responsible for delays caused by the governmental entity owner. Owner-caused delays = higher costs, which are forced onto the private sector company who did not cause, and cannot control, those delays. This is strong leverage that the owner can then use to eviscerate/manipulate other terms in the contract against the private-sector contractor (e.g., schedule, liquidated damages, change orders, etc.)

#### Proposed legislation

SB 803/HB 2265 would clarify as a matter of public policy that public owners cannot use contract terms to push financial responsibility for their own delays onto private sector contractors who did not cause those delays.

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## Funding/resources for vocational, trade, and workforce development

SB 1 by Chair Joan Huffman, House Bill 1 by Chair Greg Bonnen

+ several other bills

### AGC Supports

#### Background

People and employers continue to swarm to Texas. We have a severe shortage of workers to construct and maintain the buildings, roads, homes, and infrastructure to support our population. This labor shortage is dramatically escalating costs to construct both public and private projects.

#### Proposed legislation

The budget bills, and several other bills, will propose to provide significant additional investment and resources to our junior colleges, trade schools, ISDs, etc. to help meet worker shortages in the Texas construction industry. AGC-Texas Building Branch supports these efforts and any amendments in committee or on the floor that will enhance these efforts.

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## Fix FBI/DPS issue on background checks for contract workers at K-12 schools

(DPS/TEA bills to be announced)

### AGC Supports

#### Background

In 2007 the Texas Legislature passed legislation requiring all teachers, janitors, cafeteria workers, construction workers, and other contract workers to undergo background checks before they can enter a K-12 campus. Later legislation clarified when these background checks must be done for construction workers, architects, and engineers—and required that the private-sector contractors directly access the DPS Clearinghouse to certify that their employees on the project pass muster. After a 2019 FBI audit, the FBI directed DPS to no longer allow private-sector construction companies to directly access the DPS Clearinghouse, which state law still requires them to do.

#### Proposed legislation

Several bills this Session will be filed concerning DPS and TEA issues created by the FBI's prohibiting private entities from directly accessing the DPS Clearinghouse, which current Texas law requires construction companies to do. AGC-Texas Building Branch supports legislation that will reconcile and resolve this dilemma recently caused by the FBI for contractors, so they can comply with both FBI and Texas statutory directives.

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## Fix certificate-of-merit insurance dilemma for third-party claims on design-build projects

HB 2007 by Rep. Mando Martinez

### AGC Supports

#### Background

In 2019 the Texas Legislature took the “certificate of merit” requirement of plaintiffs who sue engineers/architects and expanded it to all “claimants” against engineers/architects (e.g, third-party claimants, counter-claimants, etc.), no longer restricting it merely to plaintiffs. On design-build projects, the engineers/architects are on the same team as the contractors—which creates an unintended dilemma by forcing some parties to admit liability (by getting a “certificate of merit” against their own team member) in their efforts to deny liability—which creates insurance coverage issues.

#### Proposed legislation

HB 2007 would resolve this unintended dilemma by excluding the new, expanded “certificate of merit” requirements for some third-party claims on design-build projects and retain the “certificate of merit” requirements where the dilemma doesn’t exist.

Groups representing contractors, architects, and engineers have reached agreed-to language for the committee substitute.

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## State pre-emption of local, anti-contractor ordinances

### “Texas Regulatory Consistency Act”

SB 814 by Chair Brandon Creighton, HB 2127 by Chair Dustin Burrows

### AGC Supports

#### Background

Local governments continue to adopt ordinances and policies regulating private sector business on certain subject matters not authorized by the State of Texas—including employee benefits, scheduling, employee leave, and hiring practices. Further, Texas businesses often work across several counties and cities—which are increasingly becoming a varying patchwork of regulations on private sector businesses.

#### Proposed legislation

A business coalition of dozens of trade associations helped develop SB 814/HB 2127, which would prohibit local governments from regulating private businesses in subject matter areas not authorized by the Legislature.

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## Creation of specialty courts in Texas

Business trial courts: SB 27 by Chair Bryan Hughes, HB 19 by Chair Andrew Murr

15<sup>th</sup> Court of Appeals: SB 1045 by Chair Joan Huffman, HB 3166 by Chair Andrew Murr

### AGC Supports

#### Background

Texans for Lawsuit Reform (TLR) has initiated an effort to create two types of specialty courts: (1) a business trial court; and (2) a 15<sup>th</sup> Court of Appeals of statewide jurisdiction.

TLR is supported in this effort by a business coalition of several trade associations, including AGC-Texas Building Branch

#### Proposed legislation

SB 27/HB 19 would create a business trial court, with jurisdiction over business law cases and complex business disputes (excluding personal injury cases). The court would consist of business-trained judges appointed by the Governor and confirmed by the Senate.

SB 1045/HB 3166 would create a new state court of appeals, the 15<sup>th</sup> Court of Appeals, with jurisdiction over matters affecting the entire state—including constitutional law, administrative law, and sovereign immunity. These justices would be elected statewide.

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