

Legislative Update

89th Regular Session (2025)

Presented by

Ben Westcott

Andrews Myers

bwestcott@andrewsmyers.com

Adam Robertson

Andrews Myers

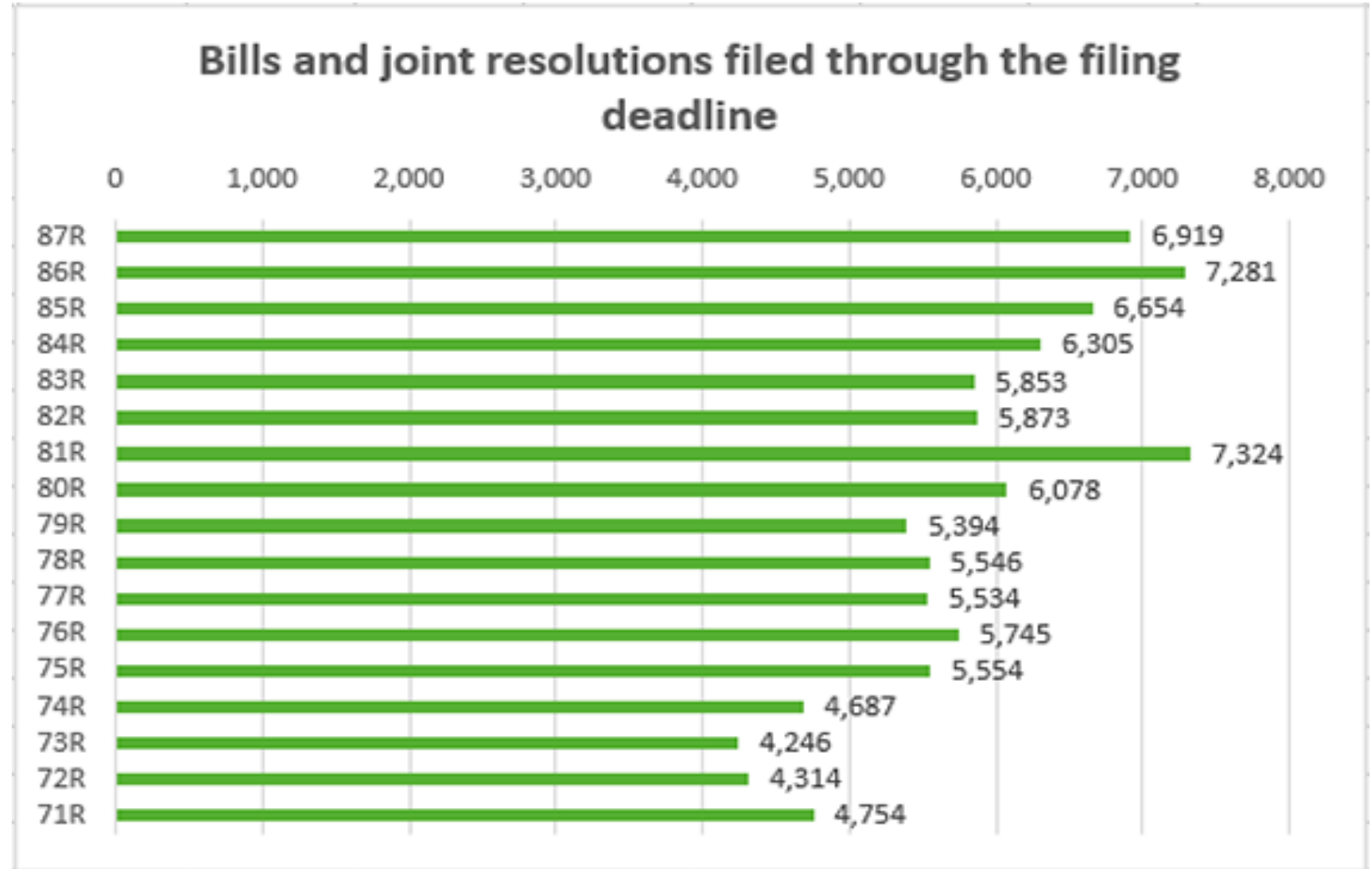
arobertson@andrewsmyers.com

89th Regular Session

- January 14, 2025 – June 2, 2025 (140 days)
- Special session (not construction related) starts July 21
 - Disaster Preparedness & Recovery
 - Economic & Social Policy
 - Additional Protections
- Still need to monitor to see if any construction issues get added to these bills.

Session Stats

- 8719 bills filed
 - 1213 passed
 - 28 vetoed
- **77 vetoes last session



Bill statistics for the 89th Legislature, Regular Session

Status	HB	HCR	HJR	HR	SB	SCR	SJR	SR	Total HB & SB	Total
Filed	5644	168	208	1540	3075	58	87	723	8719	11503
Passed	619	96	8	1490	594	28	10	717	1213	3562
Vetoed	12	0	0	0	14	0	0	0	28	<u>28</u>

Bill statistics for the 88th Legislature, Regular Session

Status	HB	HCR	HJR	HR	SB	SCR	SJR	SR	Total HB & SB	Total
Filed	5413	123	206	2543	2633	62	93	734	8046	11807
Passed	744	65	7	2461	502	35	6	730	1246	4550
Vetoed	23	0	0	0	54	0	0	0	77	<u>77</u>

Right to Repair Accrual Date

- **HB1922 (Dean/Middleton) - Effective 9/1/25**
 - Right to repair for public projects (2019) requires a written report identifying the defect(s) and 30-day inspection period along with 120-day period to correct or repair the alleged defects.
 - “a cause of action accrues on the date the report required by Section 2272.003 is postmarked by the United States Postal Service.”

Assignment of Trust Fund Claims

- **SB841/HB2226 (Hughes/Harless) - Effective 9/1/25**
 - Property Code 162 revised
 - Clarifies that construction trust fund claims can be reassigned, allowing upstream contractors to pursue payment from parties who failed to pay their vendors or subcontractors.
 - Addresses precedent from *In re RTX Custom Homes, Inc.*

**2023 Cycle – SB 586

Contractual Venue Provisions

- **HB2960 (Hayes/Hughes) - Effective 9/1/25**
 - Restores Texas' construction venue protections by ensuring contract disputes are resolved where the project occurred.
 - Changed voidable to void. Construction contract in Texas provision making the dispute subject to another state's laws or that the suit must take place in another state - VOID

Cybersecurity Liability Protections

- **SB2610 (Capriglione/Blanco) - Effective 9/1/25**
 - Creates a cybersecurity “safe harbor” for small and mid-sized businesses (under 250 employees) that implement and maintain an industry-recognized cybersecurity program.
 - Shields compliant businesses from exemplary (punitive) damages in lawsuits stemming from data breaches.
 - Requires use of standards like NIST, ISO, or CIS based on company size.
 - Promotes adoption of modern cybersecurity safeguards without creating new private causes of action

Deadline for Prompt Pay Audits

- **HB3005 (Hawkins)**

- Bona fide disputes are an exception to public prompt pay requirements – Govt. Code 2251
- Audit that continues for more than 60 days after substantial completion is not a bona fide dispute

Lien Law Cleanup

- **SB929 (Johnson/Lujan) – Effective Immediately (5/25)**
 - Clarifies lien law deadlines are next business day if deadline falls on weekend or holiday.

Surveyor Liability

- **SB687 (Hughes/Bumgarner) – Effective 9/1/25**
 - Extends existing liability protections for engineers and architects to licensed land surveyors under construction contracts, including public-sector work.
 - ❑ Prevents surveyors from being forced to indemnify others for damages outside their professional responsibility.
 - ❑ Clarifies standard of care and restricts one-sided defense and indemnity clauses.
 - ❑ Makes void and unenforceable any contract clauses that require land surveyors to indemnify or defend governmental agencies against liabilities not caused by the surveyor's own negligence or misconduct.

Statewide Building Code

- **SB783 (Menendez/Hernandez) – Effective 9/1/25**
 - Provides the State Energy Conservation Office with the authority to adopt newer energy code for commercial and residential buildings.
 - Supports consistency across jurisdictions
 - SECO must consider cost-benefit impacts and housing affordability before adopting new codes.

Personal Property Tax Exemption

- **HB9 (Meyer/Bettencourt) – Effective 1/01/26 (with constitutional amendment)**
 - Expands the ad valorem tax exemption cap for income-producing tangible personal property from \$2,500 to \$125,000.
 - ❑ Reduces tax burden on small businesses with equipment or leased assets.
 - ❑ Applies exemption to property across leased or multiple locations.

Intangible Property Tax Clarification

- **HB22 (Noble/Hinojosa) – PASSED Effective 1/01/26**
Codifies that intangible personal property is fully exempt from property taxes and repeals outdated provisions used to challenge business exemptions.
 - ❑ Eliminates uncertainty in valuation of intellectual property and similar assets.
 - ❑ Prevents local challenges to intangible asset exemptions.

Expansion of Specialty Business Courts

- **HB40 (Landgraf/Hughes) – Effective 9-1-25**
 - Specialty business court to address and resolve certain business disputes in which the value disputed exceeds ~~\$10 million~~, **\$5 million** excluding interest, statutory damages, exemplary damages, penalties, attorney fees and court costs.
 - 11 geographical divisions
 - Enables the six divisions currently not operating
 - Broadens access to specialized court (with qualified judiciary)

Corporate Law Improvements

- **SB29 (Hughes/Meyer) – Effective Immediately (5/14/25)**

- The business judgment rule is a common law concept in effect in most states providing that directors are not held personally liable for decisions made in good faith and with reasonable care, provided the decisions were made in the best interests of the company.

****Burden now on Plaintiff to get past this rule****

- Barriers to Derivative Suits – minimum ownership of 3%, attorneys' fees prohibited in some actions
- Allows for entities to establish exclusive jurisdiction in Texas and waive jury trials

Uniform General Conditions

- Texas Facilities Commission – UGCs
- The Uniform General Conditions = the baseline contract utilized for state, county, and local construction projects.
- ABC on the review committee by statute

§ 2166.305. Review of Uniform General Conditions

(b) A committee appointed by the commission shall perform the review. The committee consists of:

(2) six individuals appointed by the commission, one each from the lists of nominees submitted respectively by the:

- Committee recommendations are in – awaiting AG approval

Uniform General Conditions

- *Removed design liability for CMAR – 6.1.6*
- *No Damages for Delay (Section 9.7) – Contractors can receive compensation for owner caused delays after notice (applies to owner and those for whom owner is responsible)*
- *Concurrent Delay (Section 9.8) – Contractors can receive time extensions during periods of concurrent delay.*
- *Added Broad Mutual Waiver of Consequential Damages 9.12*

Uniform General Conditions

- *Expanded Force Majeure (Section 13.3.3) – Added pandemics, supply chain disruptions, and regulatory changes as valid delay reasons.*
- *Substitutions (Section 8.3.5) – Expanded options for substitutions when products are no longer readily available and when the project will benefit.*
- *Final Payment 10.3.2.4 – must be made within 90 days of Substantial Completion absent a dispute.*
- *Punch list 12.1.2 – gives Contractor extra time (+30 days) for items outside of its control*
- *Warranty 13.3.3 - exclusion for Force Majeure events.*

Bills that Were Not Passed in 2025

- PLA
- Rehab Tax
- Repose
- Change Order Increases
- Damages for Delay
- Incorporation by Reference
- IPC Adoption
- Nuclear Verdicts
- Others



~~Expansion of 811 protections~~

HB1335 (Kolkhorst)

- Expands marking obligations to include telecommunications, petroleum or any other liquid in an underground conduit or pipeline.
- Provides protections to those who call.
- Provides for penalties for those who fail to comply.

Died in Committee



~~Project Labor Agreement~~ ~~Prohibition~~

SB925 (Hancock/Hefner)

- Prohibit Project Labor Agreements.
- Expands the 2019 Fair and Open Competition Act, prohibiting Project Labor Agreements on all public projects, including local government projects (cities, counties, school districts). This ensures fair and open competition, allowing all qualified contractors to bid without union mandates.
- Prevents union-only mandates in city, county, or school district projects.

Passed Senate. Died in House



~~Repeal Rehab/Remodel~~ ~~Tax~~

SB2020 (Hancock/Hefner)

Eliminates the current tax on non-residential building renovations, encouraging investment in Texas' existing infrastructure.

This tax currently discourages property improvements and penalizes renovation over new construction.

- **Died in Committee**
- Death by Fiscal Note
- Legislative Budget Board – over \$1 billion



~~Shortened Statute of Repose~~

HB3223 (Leach)

Sought to reduce statute of repose on private projects from 10 years to 8 years.

Died in Senate Committee



~~Change Order Limits~~

HB386 (Gervin-Hawkins)

Public Projects

Updated the current \$1 million cap on change orders to reflect inflation and current project costs.

Existing cap is 25% for contracts over \$1mm.

Proposed revision - \$5mm or more 25% cap still applies.

Proposed revision - \$5mm or less 50% or \$1mm, whichever is greater.

Died in House

(Dem author – killed by Lt. Dan)



~~Owner Caused Damages~~ ~~for Delay~~

SB776 (Hughes/Leach)

- Provided that a provision in a construction contract between a governmental entity and a contractor may not prohibit the award of compensatory damages because of a delay caused solely by the governmental entity or by a party for which the governmental entity is responsible.
- Compensatory damages= the costs actually incurred by the contractor as a result of delay in the schedule that could not be reasonably mitigated by the contractor
 - Does not include special damages, consequential damages, overhead, profits, or indirect costs



Died in Senate Committee

~~Incorporation by Reference~~

SB1040 (Parker/Hayes)

Upstream party required to provide any documents incorporated into the Contract at least 10 days prior to execution of the contract, if requested by downstream party.

Died in House Calendars Committee



~~IPC Adoption~~

HB 747 (Cecil Bell)

Establish the International Plumbing Code as single statewide plumbing code.

Consistency for contractors across Texas.

Some jurisdictions use Uniform Plumbing Code.

Died in House Committee



~~Nuclear Verdicts~~

SB30 (Schwertner/Bonnen)

- Attempt to address manufacturing of medical bills used in lawsuits by only allowing evidence of amounts actually paid by the individual.
- Letters of Protection Admissible
- Trial judge discretion to reduce award

Died in Conference Committee

Amendments killed it



~~Retainage = Trust Funds~~

SB1612 (Keith Bell/Johnson)

- Attempt to make retainage funds required under lien laws also designated as trust funds under the trust fund act.

Died in House



~~Prompt Pay Cross Project Defaults~~

HB3289 (Keith Bell/Johnson)

- Private Prompt Pay Act not allowed to avoid payment for defaults on other Projects.
- Cross-default or cross-offset prohibition.

Died in House



~~Trust Fund Cross Project Defaults~~

HB3288 (Keith Bell/Johnson)

- Trust Fund violation if withholding or diverting funds due to for defaults on other Projects.
- Cross-default or cross-offset prohibition.

Died in House



~~Retainage Modifications~~

HB3290 (Keith Bell/Hinojosa)

- Sought to modify dates in which owner must hold retainage following project completion and set period in which half of the retainage funds should be paid.

Died in House



~~Right to Repair.V3~~

HB29 (Barry)

- Expands Right to Repair protections to large-scale infrastructure projects.
- Updates definition of “critical infrastructure.”.

Died in House Committee



