



Vol. I, Issue
11

April 10, 2009

The alarm continues!

According to Lt. Gov. David Dewhurst, we have the votes currently to block both Phantom Damages (SB 1119) and Entergy (SB 2063), but the asbestos causation bill has enough votes to be brought up (SB 1123). Quite directly, the business community has been encouraged to negotiate. There have been meetings with Senator Robert Duncan, but thus far the business community (with the exception of Centerpoint Energy) has been united in support of retaining a scientific causation standard. More will happen after Easter. I will keep you posted. Thanks to Chuck Swallow (chair of the Central Texas Chapter Board and an ABC of Texas Board member) and David Ford (President of the Central Texas Chapter) for taking the time to attend a crucial meeting where the business community showed its resolve to oppose rolling back tort reform.

As I reported last week—this is getting ugly.

Both SB 1119 by Hinojosa (phantom damages) and SB 1123 by Duncan (dealing with asbestos causation) have been on the Senate Intent Calendar and remain on that calendar for next Tuesday, April 14. That makes two active bills we will be trying to block next week. Senator Joan Huffman has managed to gather and hold (under intense pressure from Senator Duncan) what we estimate to be 13 blockers (only 11 are needed, but you need a “safety” margin sometimes). Senator Bob Nichols and Senator Joan Huffman are trying hard to gather blockers on SB 1123, but appear to be unsuccessful. We are not sure we can succeed due to the influence of Senator Duncan on his fellow Republicans. The only good news we have heard is that apparently Senator Tommy Williams has been successful thus far in gathering enough blockers on SB 2063 (Entergy), and the bill has not yet been heard in Senate Committee.

In the House, the Committee on Judiciary and Civil Jurisprudence continues to hold both phantom damages (HB 1956) and asbestos causation (HB 1811). In addition, the House Business and Industry Committee has not yet reported HB 1657 (Entergy), although we believe the votes are there to report the bill. It has been pending in that committee since the hearing on March 16.

And, next Wednesday, April 15, we have hearing on a bad immigration bill (SB 357 by Patrick). On that same day, we have hearings on several bad trades bills in the House Committee on Licensing and Administrative Procedures (see below). And, the House Judiciary and Civil Jurisprudence Committee will hear HB 2696 by Gattis which prohibits pre-dispute arbitration agreements—another bad bill.

But, on a more positive note, our Alternative Delivery Systems bill (SB 1110 by Jackson) should get recommended for the Senate Local and Uncontested Calendar at the next opportunity. And, our Trust Funds bill (HB 1513 by Rep. Wayne Smith) should be set on the House Calendar the week of April 20. We also now have the support of both Texas Construction Association and Associated General Contractors-Texas Building Branch on the

Trust Funds bill. We may also get the support of the Hispanic Contractors Association (they strongly support repealing the prevailing wage).

I attended a meeting on Thursday dealing with the Indemnification Bill at the request of Rep. Bryan Hughes who has been designated by Rep. Todd Hunter, chairman of the House Committee on the Judiciary and Civil Jurisprudence, to try to find some common ground among the various parties and positions on HB 818 (the Indemnification bill).

Earlier in the week, I arranged a presentation by Dick Trabulsi of Texans for Lawsuit Reform before the Texas Agricultural Council, a group to which I had formerly belonged.

Committee hearings this week:

Monday, April 6

The House Judiciary and Civil Jurisprudence Committee heard HB 818 (SB 555) dealing with Indemnification. Bob Parker, an ABC of Texas Board member from the Coastal Bend Chapter testified.

Tuesday, April 7

House Business and Industry Subcommittee on TRCC, Property and Landlord and Tenant Issues heard HB 3606 by Rep. Doc Anderson which prohibits doing away with secret ballots for union elections in Texas. ABC of Texas supported the bill.

House State Affairs heard a severe health preference bill which provides a state preference for bidders that provide health insurance for employers and their dependents. **Our opposition would have been stronger if we had a witness.** I put in a card in opposition.

Wednesday, April 8

House Licensing and Administrative Procedures heard HB 1854 relating to the registration of roofing contractors. HB 2600 relating to the licensing and regulation of sheet metal workers was delayed until next Wednesday. I submitted written testimony against HB 1854.

Committee hearings next week (as of today):

Wednesday, April 15

Senate Transportation and Homeland Security Committee will hear SB 357 and SB 358 by Senator Dan Patrick. SB 357 is the bill that could most affect ABC of Texas members—I **have sent a request to our pre-identified witnesses and our lead chapter.**

House Licensing and Administrative Procedures Committee will hear SB 2600 (sheet metal workers) and HB 1971 (fire protection sprinkler technicians). **Hopefully, we can get witnesses against both of those bills. If we do not, we will have a harder time opposing them effectively.** The committee will also hear HB 4142 (purchase of copper parts)—**we cannot oppose this bill without a witness identifying how to make the bill acceptable or explaining the problems with the bill from a contractor's perspective**—it is addressing a problem with black-market copper parts.

Senate Intergovernmental Relations—SB 615 (health insurance preference for counties) amends the current law to take out a preference for benefits that are comparable to the county's and substitutes the word "reasonable". This bill relaxes the current health preference requirement in Sec. 262, Local Government Code, but increases the ability of the county to not pick by providing a 10% differential (up from the current 5%). **I can put in a card against the bill, but a witness would be more effective.**

The ABC of Texas Board will meet on Friday, April 17. This will be a regular business meeting with legislative updates.

It is important to continue to emphasize that we can be most effective as an organization if we get **well-reasoned arguments against passage** and **witnesses that can testify if the bills are heard**. **We continue to need both arguments or ways to fix and witnesses if we are opposing a bill**. **Most chapters are just sending us positions which severely handicaps our ability to impact the legislation**. **If we cannot obtain witnesses, I could at least prepare written testimony if I received specific arguments against the bill**.

Below is a brief summary of action or relevant information on ABC of Texas' Priority Legislative Issues:

Immigration—ABC of Texas is opposing 2 of the 3 immigration bills sent to the Chapters for positions. Those are HB 48 by Rep. Debbie Riddle (knowingly employing persons not legally in the United States) and HB 266 by Rep. Leo Berman (comprehensive bill that would punish employers). ABC of Texas ended up supporting HB 128 by Rep. Burt Solomons (prohibiting the issuance of licenses to those not legally in the country), although the vote was close. That bill was heard previously and is still pending. ABC of Texas is taking a leadership role in opposing state action on illegal immigration and has been joining other TEIR members in weekly meetings to coordinate efforts. We are obviously against all bills that would cancel business licenses for employing illegal aliens since there is no system for protecting employers from honest mistakes and avoiding employment discrimination. The only hearings on immigration bills other than the one mentioned above are set next week in the Senate (see above). Time is getting short and that is good for us. Since no bills have been set for hearing in House State Affairs for next week, it will be the week of April 20 before any can be set. That means that realistically, there are 4 more weeks for House bills to be heard in House committees (after next week), and the chance of passage declines as each week passes.

Contractor Licensing—Great news!!! AGC-TBB did not have the bill we had been opposing introduced this session. Congratulations to ABC of Texas members who provided assistance in pointing out the problems with that proposal.

Alternative Delivery Systems—SB 1110 by Senator Mike Jackson was referred to the Senate Committee on Government Organization and was heard and reported from committee with a recommendation that it be placed on the Local and Uncontested Calendar. Kathleen Acock, a member of the ABC of Texas Board from the South Texas Chapter, was in town to testify. HB 2106 by Rep. Charlie Geren was referred to the House Committee on State Affairs. There is a committee substitute that has been circulated to ABC of Texas issue leaders.

Indemnification/Workers' Compensation/Third Party Liability—ABC of Texas is supporting SB 555 by Senator Robert Duncan and HB 818 by Rep. Craig Eiland. The Senate bill passed on Wednesday, March 18. It was heard in House committee on April 6. Chairman Todd Hunter has asked that the parties deal with Rep. Bryan Hughes (Vice Chair) to try to find some common ground on points of opposition. This bill is the result of negotiations among AGC-TBB, the Texas Construction Association and the TCJL. ABC of Texas is also an active participant in joint efforts led by TLR and TCJL to oppose any erosion in tort reform this session and to protect favorable court decisions. So far, we've been able to hold HB 1657 in an unfavorable (to

our interests) House Committee. SB 2063 is the Senate version. It has not yet been heard in committee. ABC of Texas is working with TLR to secure 11 “blockers” to prevent Senate consideration. Our Senate “champion” is Senator Tommy Williams. If Senator Williams can secure 11 identified blockers, it might prevent movement of the bill in the House.

Trust Funds—HB 1513 by Rep. Wayne Smith and SB 1137 by Senator Mike Jackson. The house bill was heard in subcommittee last week and was reported from the full committee on Wednesday, April 1. It is in the House Committee on Calendars. We expect it to be set for consideration by the full House as early as the week of April 20.

Prevailing Wage—HB 1042 by Rep. Tan Parker was referred to the House Committee on Technology, Economic Development and Workforce this week. The author, Rep. Tan Parker is Vice Chair of the committee. Rep. Parker’s office has contacted us about witnesses for the hearing. The Hispanic Contractors Association has indicated they will support the bill. But, any House bill not heard by next week is in serious trouble.

Trades Legislation—We have circulated several bills to chapters for positions if we are not certain. Our biggest problem is securing witnesses and good arguments to oppose. Unfortunately, we begin scrambling for witnesses on Thursday and Friday for hearings the next Monday, Tuesday and Wednesday. That is just the process. The Senate only requires 48 hours notice! Thus, we will need witnesses at short notice on some of these bills. I have been working with Mike Gremillion and have engaged John Bernard and Kimberly Bernard from the Southeast Texas Chapter, as well as Bob Jett of the South Texas Chapter, to try to get some language to fix the electrical apprentice bill (SB 470). We are working with NCCER also. Hopefully, we are getting close.

In addition, ABC of Texas has taken positions on the following bills. For text of the bills, please see <http://www.capitol.state.tx.us/> --use the Search Legislation menu.

SB 127 (state building standards)—Against
SB 180 (State OSHA)—Against
SB 222 (prohibiting arbitration agreements in contracts)—Against
SB 229 (expanding availability of design-build)—For
SB 447 (allowing local preference in municipal contracts)—Against
SB 470 (elec. apprentice training)—Against
SB 496 (*Qui Tam*)--Against
SB 508 (local preference for bids)—Against
SB 555 (indemnification)—For
SB 648 (employee leave for special ed students)—Against
SB 692 (employee family leave)—Against
SB 1354 (plumber cleanup)—Neutral
HB 48 (license suspensions for employing illegal aliens)—Against
HB 128 (checking immigration status for licenses)—For
HB 266 (punitive and expansive immigration bill)—Against
HB 303 (tax exemption for green buildings)—For
HB 308 (employer jury duty pay)—Against
HB 431 (state building standards—LEED)—For
HB 535 (preference for employers with health insurance)—Against
HB 707 (local preference for bids)—Against
HB 818 (indemnification)—For

HB 987 (comp. procurement and change orders for local gov'ts)—For
HB 963 (employee criminal history check for license—vol.)—For
HB 1005 (employee school leave)—Against
HB 1136 (drug testing for unemployment ins.)—For
HB 1173 (card check for Austin police and fire)—Against
HB 1209 (trust funds)—For
HB 1291 (disaster remediation contractors)—Against
HB 1507 (noise)—Neutral
HB 1564 (strikers unemployment insurance)—Against
HB 1606 (registration of construction manager-agents doing business with government)—
Against
HB 1807 (cranes)--Against
HB 1854 (roofing contractor licensing)—Against
HB 1971 (fire sprinkler technicians)—Against
HB 2082 (local preference)—Against
HB 2081 (SOAH for TDLR)—Neutral
HB 2310 (TDLR powers)—For (with clarifications)
HB 2600 (Sheet metal)--Against
HB 2623 (Unemployment insurance “modernization”)—Against
HB 4132 (Essen. Workers)—Neutral
HB 4142 (theft of copper)—Against
HB 4377 (ombudsman)—For