

September 2021

Texas

MERIT SHOP

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Journal



BRYAN HUGHES

Senator Bryan Hughes — chair of state affairs — led a crucial charge on behalf of Texas contractors in the 87th Legislative Session to clarify that contractors should not be responsible for design errors created by others.





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The Texas Legislature has officially gaveled out of its 87th Regular Session. This year was a busy session in Austin, with the Legislature taking up a variety of bills impacting the construction industry. Bills that have made their way to Governor Greg Abbott's desk include: (1) changes to requirements for public jobs; (2) increased protections and relief for contractors; and (3) changes to lien laws.

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LETTER from the Chairman



HOLLIMAN

This 87th Legislative Session was successful for the construction industry and the business environment in Texas. We are very appreciative to the legislators that supported the bills positively impacting the construction industry. Our priority issue concerning design defects (SB 219), was signed into law and became effective Sept. 1, 2021.

I am glad to share that the search committee has completed its task to identify the new President for ABC of Texas. We welcome Geoffrey Tahuahua, starting in September 2021 as the new ABC of Texas president. We are confident that Geoffrey will provide strong leadership to continue to grow our statewide efforts. He brings over a decade of government affairs experience to ABC of Texas, including key leadership positions with two other associations. Geoffrey is well known by many with the state legislature community and our industry, and is very familiar with ABC.

Congratulations and welcome aboard, Geoffrey! We look forward to many successful years.

As in past issues, I have enjoyed sharing famous quotes that are as current today as they were several years ago. Here are some relevant historical quotes for reflection and pondering:

“Freedom is a fragile thing and is never more than one generation away from extinction.”
– Ronald Reagan

“If we lose freedom here, there is no place to escape to. This is the last stand on Earth. And this idea that government is beholden to the people, that it has no other source of power except to sovereign people, is still the newest and most unique idea in all the long history of man’s relation to man ... whether we believe in our capacity for self-government or whether we abandon the American revolution and confess that a little intellectual elite in a far-distant capital can plan our lives for us better than we can plan them ourselves.” – Ronald Reagan

The next election cycle will be absolutely critical to ensuring ABC of Texas’ success in future sessions. If you are not already contributing to your chapter PAC, **now is the time**. Every dollar will go to support pro-merit-shop and pro-free-enterprise candidates and help maintain our momentum.

Lastly, I want to thank each member of the Executive Committee and the entire board for your dedication and service. I would also like to thank each of the presidents and CEOs of the eight Texas Chapters that devote selfless time and energy to help ABC of Texas achieve the successes of its goals and priorities through each legislative session.

God bless America, God bless Texas and God bless each of you. Thank you for allowing me to represent this organization and be a voice on behalf of merit shop and free enterprise principles in Texas.

GP Paul Holliman

2019-2021 ABC of Texas Chairman
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Learn how you can get involved with the ABC of Texas Chapter, call (979) 587-1734

LETTER from the President



TAHUAHUA

Dear ABC members,

I am honored to serve as your new president for ABC of Texas and am excited to be leading such an important organization for the construction industry in Texas.

For over 10 years I have spent my career in and around Texas politics, including most recently at the Real Estate Council of Austin (RECA), where I served as vice president of policy and government affairs. At RECA, I witnessed firsthand many of the challenges facing our industry at the local level and across the state, including overburdensome regulations and an unpredictable regulatory climate.

These challenges highlight the importance of the work we do here at ABC of Texas. Our focus has and will always be to bring the men and women who build Texas together to create a work environment that encourages open competition, innovation and a respect for free enterprise.

You should be proud of the success we had during the recent 87th Legislative Session. ABC of Texas successfully ensured passage of a number of priority bills, including Senate Bill (SB) 219, related to liability for design defects. I credit this to the incredible leadership we have on our board and the strength of our local chapters.

But in order to build upon this success, we need to continue to support candidates and grow relationships with elected officials who understand the importance of our industry and are committed to reducing government burdens on the Texans building our state's future. With redistricting well underway, the next election cycle will be critical for us to protect our allies – and potentially add a few more.

I look forward to meeting each and every one of you as I travel throughout the state in the coming weeks and months and working with you to help ABC of Texas remain strong and chart a course for a greater future.

Sincerely,

Geoffrey Tahuahua
President





BRYAN HUGHES

BY: BEN WESTCOTT, ANDREWS MYERS PC, ABC OF TEXAS LEGISLATIVE LIAISON

Senator Bryan Hughes – chair of state affairs – led a crucial charge on behalf of Texas contractors in the 87th Legislative Session to clarify that contractors should not be responsible for design errors created by others.

The Problem. The generally accepted rule across the country when it comes to liability for design defects is known as the Spearin Doctrine, which comes from a 1918 U.S. Supreme Court case. The Spearin Court ruled that if a contractor follows the plans provided by the owner, and the plans turn out to be defective, the owner, not the contractor, is liable for any damages resulting from those design defects. Virtually every single other state, except for Texas, follows this rule. Texas followed the Lonergan rule. In 1907, the Texas Supreme Court, in Lonergan v. San Antonio Loan & Trust, held that it was the responsibility of the builder to reconstruct a collapsed building, even though the collapse was due to a fatal defect in the design plans and specifications prepared by the architect of the owner. In the 2012 Texas Supreme Court case, El Paso Field Services v. Mastec, the court reaffirmed its decision in Lonergan. While it seems completely reasonable for a contractor to rely on plans, specifications and other documents provided to the contractor, until now, if there was a problem with the work due to an error in the plans and specifications, the contractor (not the owner) bore the risk of liability for the defective plans.



The Solution. Legislation was first drafted in 2019 to provide that a contractor is not responsible for the consequences of defects in design or bid documents provided to the contractor by the person with whom the contractor has entered into a construction contract. It also attempted to prevent an owner from requiring a builder to waive this protection by contract. The legislation was re-filed in 2021. Chairman Hughes and his staff, including Drew Tedford, did a masterful job organizing stakeholder meetings, receiving and addressing feedback from interested parties and carving a path forward to having the bill heard in the Senate. Chairman Jeff Leach led the charge in the House. The bill was signed by Governor Abbott on June 16, 2021 and became effective Sept. 1, 2021.

The Team. The legislative team was led by Chairman Hughes and Chairman Leach. Joint Sponsors, included Reps. Barbara Gervin-Hawkins, Justin Holland and Eddie Lucio, III. Co-sponsors, included Reps. Sam Harless, Lacey Hull and Valoree Swanson. ABC of Texas participated in a coalition of construction trade associations and pro-business groups to provide support to Senator Hughes

and Representative Leach and their staffs as needed. Wade Long and Joe Garcia provided tireless contract lobbyist support inside the Capitol to educate on the issues and respond to questions.

When we spoke earlier this month, Senator Hughes framed the bill perfectly: "This bill is based on fundamental principles of fairness. Contractors need to be able to take responsibility for their own actions, but not be stuck with responsibility for the actions of others."

The Future. With the passage of SB 219, Texas is shifting the liability for defects in any designs, specifications or plans away from contractors when the plans were provided by the owner, the owner's agent or the owner's design architect or engineer. The specific statute will read as follows:

"A contractor is not responsible for the consequences of design defects in and may not warranty the accuracy, adequacy, sufficiency or suitability of the plans, specifications or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators or suppliers, or its consultants, of any tier."

Contractors are still required to exercise a reasonable amount of diligence when implementing the designs provided by the owner. And, if a potential defect is uncovered, the contractor has a duty to disclose that information.

“A contractor must, within a reasonable time of learning of a defect, inaccuracy, inadequacy or insufficiency in the plans, specifications or other design documents, disclose in writing to the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications or other design documents that is discovered by the contractor, or that reasonably should have been discovered by the contractor using ordinary diligence, before or during construction.”

The statute defines “ordinary diligence” as “reasonable preparation of a bid or fulfillment of its scope of work under normal circumstances.” This means that a contractor is only expected to act in the contractor’s capacity as a contractor. The contractor is not required to consult with a licensed architect or engineer to scrub the plans for defects. If a contractor fails to disclose a discoverable design defect as required under this section, they can be held liable for the consequences of defects that resulted from the failure to

disclose. This is not an all or nothing situation. The question will be “what consequences could have been avoided if timely disclosure was made?”

Exceptions. The new legislation applies to all contracts for the construction or repair of an improvement to real property, subject to the following exceptions:

- Critical infrastructure projects: examples include refineries, chemical plants, water treatment or pump stations, gas compressor stations, telecommunication facilities, airports, ports and railroads
- Design-build contracts (in whole or in part)
- Engineering, procurement and construction (EPC) contracts
- Contracts that include a provision by which the contractor agrees to provide input and guidance on plans, specs or other design documents to the extent that:
 - o The contractor’s input and guidance are provided as signed and sealed work product of a person licensed or registered as an architect, engineer or land surveyor

- o The work product is incorporated into the plans, specs or other design documents used

Final thoughts. Thankfully, Texas contractors can breathe a collective sigh of relief. Texas’ rather harsh approach to design defects has, finally, been curbed a bit under this new legislation. Although due diligence and prompt notice is still necessary to identify and disclose any potential issues, contractors will not be stuck with the consequences of design defects created by others.



Ben Westcott of Andrews Myers is the immediate past board chair for ABC of Texas and currently serves as its legislative liaison. Ben Westcott is Board Certified in Construction Law by the Texas Board of Legal Specialization. The

prestigious legal directory, Chambers USA, America’s Leading Lawyers for Business, again recognized Ben Westcott as a leading construction lawyer for 13 consecutive years.



Back Injury Prevention

BY: KRISTIN ALLMAN, E&M CONSULTING, INC.

BACK INJURIES AMONG CONSTRUCTION WORKERS are common – in fact, they make up nearly 42% of all industry-related musculoskeletal conditions.¹ Reducing the preponderance of spinal injury is a challenge for many construction firms, but it is a critical issue to mitigate.

Utilizing proper workplace safety training will protect employees from hazards and falls, but assistive devices should also be made readily available to transport weighty materials. Heavy objects should be placed at waist level to reduce straining, twisting and bending, and workers should be dissuaded from standing or sitting for extended periods of time.² Employers should also require workers to take occupational health and safety training courses, many of which are provided by OSHA, as part of their workplace safety culture.³

According to the National Center for Construction Education & Research, serious back injuries are not just debilitating, they often lead to muscle weakness, permanent nerve damage and a lifetime of chronic pain – and many workers simply do not recover.⁴ However, with proper planning and safety protocols in place, workplace back injuries are largely preventable.

Sources:

1. <https://www.constructionexec.com/article/constructions-big-pain-how-imaging-may-misdirect-care-for-lower-back-soreness>
- 2, 3. <https://www.osha.net/workplace-safety/safety-training-prevent-workplace-low-back-injury/>
4. <https://www.nccer.org/news-research/newsroom/Article/injury-prevention-and-safety-in-the-construction-industry-a-complete-guide>

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ABC's Free Enterprise Alliance Advocating for Fair and Open Competition

BY: GPAUL HOLLIMAN, SEDALCO, INC., 2021-2022 FREE ENTERPRISE ALLIANCE CHAIRMAN

Free Enterprise Alliance's (FEA's) educational initiative for this article is to share facts concerning the Infrastructure Investment and Jobs Act (IIJA) and the Build Back Better Act as they make their way through the halls of Congress.

It seems Congress always finds a way to kick the can down the road, waiting for another generation to address the issues that proved to be unachievable in their respective time. Perhaps there is no better example of an issue that has eluded Congress for decades than a significant investment in America's infrastructure.

It remains to be seen if this 117th Congress will buck this trend; however, President Biden continues to seek to implement two different proposals that constitute his "infrastructure" agenda – both a physical infrastructure plan, the \$1.2 trillion Infrastructure Investment and Jobs Act (IIJA) and what he is calling a "human infrastructure" package, the forthcoming budget reconciliation bill, the Build Back Better Act.

While the IIJA was passed with bipartisan support in the U.S. Senate on Aug. 10, the bill still needs to make its way through the House in order to make it to the president's desk. On top of the incredible sum of money that will be routed to federal and state construction, the IIJA includes many important investments in physical infrastructure, including a 34% increase in federal funding for the nation's transportation infrastructure, hard-fought provisions to expedite the federal permitting process for construction projects, workforce development opportunities for hardworking Americans and additional investments in new technology to bring the design, management and building of construction projects into the 21st century.

The IIJA's journey through the narrowly divided and historically partisan Senate seemed more than unlikely earlier in the year. After Democrats passed the \$1.9 trillion American Rescue Plan in March via the budget reconciliation process, it seemed that Republicans would find it hard to stomach the price tag of another trillion-dollar government spending bill, despite a broad consensus on the need for critical investments in the nation's infrastructure.

Despite the challenges facing the physical infrastructure bill, IIJA beat the odds in the Senate. The bill ultimately did not contain the policies such as government-mandated project labor agreements, stringent apprenticeship requirements, costly tax hikes and support for the radical



For the construction industry, the bipartisan IIJA is not perfect; however, it remains a hard-fought accomplishment that ABC believes will offer its members opportunities to win work.

Protecting the Right to Organize (PRO) Act, thanks in part to a relentless issue advocacy campaign from ABC and the Free Enterprise Alliance.

While ABC recognizes the bipartisan victories of the IIJA, there remains some concern over the bill's provisions that expand costly labor requirements and include misguided "buy American" and "local hire" conditions. Additionally, the broad authority of federal agencies in overseeing the implementation of the bill, should it be signed into law, and actions the administration has signaled it could take to limit participation from merit shop contractors, could limit the impact and benefits of this bill in states and local communities.

After its passage in the Senate, the bill has been dormant in the House, where House Speaker Nancy Pelosi, D-Calif., has continued to call for passing the partisan

budget reconciliation bill, the Build Back Better Act in tandem with the bipartisan infrastructure proposal, the IIJA.

Democrats, who have been unable to pass the ABC-opposed Protecting the Right to Organize (PRO) Act, as a last-ditch effort, are seeking to add some dangerous provisions of the bill into the Build Back Better Act. Reports have surfaced that they are considering inserting new requirements that would make it harder for workers to qualify as independent contractors and may provide tax deductions for union dues, as well as increased penalties on employers and directors or organizations, while providing additional financial support for striking workers. Further, in order to pay for the May provisions of the Build Back Better Act, Democrats are seeking to raise taxes, which would have a devastating impact on ABC members and the economy and would make it tougher for many construction businesses to hire new workers and provide competitive pay and benefits for their employees. Though all provisions would have to eventually survive the scrutiny of budget reconciliation's Byrd Rule, only a simple majority will be needed to pass the Build Back Better Act, meaning congressional Democrats will only need to negotiate with those in their own party to pass the bill.

As details of the Build Back Better Act continue to be released, it is clear that this budget reconciliation bill will be an anti-merit-shop bill as it contains potential detrimental tax and labor provisions.

It is yet to be seen if either the infrastructure bill or the budget reconciliation package will eventually be enacted; however, as the non-binding Sept. 27 deadline to consider the IIJA looms, the two massive bills remain top of mind for Congress who will face an imposing legislative logjam this fall – the Sept. 30 lapse in government funding and the always controversial raising of the debt ceiling.

For the construction industry, the bipartisan IIJA is not perfect; however, it remains a hard-fought accomplishment that ABC believes will offer its members opportunities to win work. However, if Congress and the Biden-Harris administration pair the IIJA with the tax hikes and dangerous labor measures proposed in the partisan Build Back Better Act, the eventual success of any infrastructure investment will be greatly hindered.

FEA's purpose is to help educate ABC members and their employees, elected officials, and the public about the issues important to open competition in America. As the heart of our mission is to advocate for fair and open competition through issue advocacy, FEA will adamantly oppose the \$3.5 trillion Build Back Better Act as we continue to fight back against bills that are adversarial to the values of the merit shop philosophy.

Please visit freeenterprisealliance.org to learn more about the Free Enterprise Alliance.

Thank you to Vance Walter and Melanie Pfeifferberger from ABC National for contributing to this article.



TEXAS LEGISLATURE

87TH REGULAR SESSION UPDATE (JUNE 2021)

BY: PATRICK KELLY, ANDREWS MYERS PC

The Texas Legislature has officially gaveled out of its 87th Regular Session. This year was a busy session in Austin, with the Legislature taking up a variety of bills impacting the construction industry. Bills that have made their way to Governor Greg Abbott's desk include: (1) changes to requirements for public jobs; (2) increased protections and relief for contractors; and (3) changes to lien laws.

Below is a summary of the bills that may impact your business that have been signed into law by Governor Abbott.

- **Contractors not liable for design defects (SB 219) – effective Sept. 1, 2021**

- o Establishes that a contractor who is a party to a contract for the construction or repair of an improvement to real property is not responsible for the consequences of design defects in, and may not warranty, the accuracy, adequacy, sufficiency or suitability of plans, specifications or other design documents provided to the contractor by a person other than the contractor's agents, contractors, fabricators or suppliers, or its consultants, of any tier.
- o **However**, a contractor, within a reasonable time of learning of a defect, inaccuracy, inadequacy or insufficiency in the plans, specifications or other design documents, must make a written disclosure to the other contracting party of the existence of any known defect.

- **Additional retainage requirements for certain public works construction projects (HB 692) – effective June 15, 2021**

- o This bill sets the maximum amount for retainage at 10% for jobs under \$5 million, and 5% for jobs over \$5 million.
- o It also allows for retainage to be placed in an interest-bearing account for projects that are negotiated, and for competitively bid projects of \$10 million or more.
- o Additionally, it prohibits: (1) subcontractors from withholding in excess of the rate of retainage withheld by the general or prime contractor, (2) the withholding of retainage during the warranty period and (3) withholding of retainage after the completion of work performed under the contract when it was work on manufactured goods or systems that were specified by the designer and properly installed.
- o The owner also must specify in writing why retainage is being withheld and give the contractor a chance to cure.
- o Lastly, the bill requires public works contracts to contain a provision stating when the contract is considered substantially completed and when the governmental entity may release all or a portion of retainage.

- **Contracting on public works (HB 2581) – effective Sept. 1, 2021**

- o This bill addresses the lack of clarity, objectivity and process when it comes to awarding contracts on public works jobs.

- o It will require disclosure of scoring methodologies and bid evaluations and requiring the weighted value assigned to price for certain projects to be at least 50% of the total weighted value of all selection criteria.
- o Governmental entities must provide documents related to how an unsuccessful offeror was ranked or scored upon request without requiring "open records" or public information requests 30 days after request from the contractor.
- o Competitive sealed proposals for "civil works" projects must assign a 50% weight to price and allows for an entity to assign a lower price weighting with the formal approval of its governing body to 36.9%.
- o CSP scores and evaluations must be made public and provided to all offerors within seven days of award.
- o And increases the time that a contractor may seek injunctive relief from 10 calendar days to 15 calendar days after the contract has been awarded.

- **Modernizing/simplifying lien laws (HB 2237) – effective Jan. 1, 2022**

- o This bill includes several large-scale changes to the way contractors perfect liens.
- o First, the bill eliminates the second month subcontractor notice requirement to general contractors. This reduces the total amount of notices that subcontractors have to send.
- o Second, lien deadlines are extended to the next business day. If the last day for the lien/notice falls on a Saturday, Sunday or legal holiday, the period is extended to include the next business day.
- o Third, it shortens the statute of limitations for filing suit to foreclose on a lien to one year from when the lien could be filed.
- o Lastly, it provides for expedited discovery for information relating to the validity and removal of the lien.

- **Limiting the use of Energy Saving Performance Contracting (ESPC) contracts (HB 3583) – effective June 14, 2021**

- o ESPC is a method of finance that allows a facility to complete energy-saving improvements within an existing budget by paying for them with money saved through reduced utility expenditures.

- o This bill addresses perceived misuse of ESPC contracts by ensuring that energy savings performance contracts are utilized in a transparent manner for the purpose originally intended, and not as a means to bypass statutes relating to the procurement of public works projects.
- o The bill specifically prohibits the use of ESPC for public works and civil works projects that are subject to well established contracting and procurement statutes by specifically prohibiting the use of ESPC for the design or construction of major civil works projects.
- **Uniform general conditions (UGCs) for K-12 building construction (SB 338) – effective June 7, 2021**
 - o In an effort to adopt uniform building conditions for building construction contracts and to improve efficiency, this bill will allow school districts to adopt uniform general conditions to be incorporated in all district building construction contracts after review by the Texas Facilities Commission.
- **Shorten statute of repose for public works to eight years (+1) (HB 3069) – effective June 14, 2021**
 - o Would shorten the time public building owners can sue for defects from 10 years to eight years for public projects. Building owners would have an additional year (instead of an additional two years) to sue for defects discovered in the last year.
- **Fix from last session's contingency lawyers bill on construction defects (SB 1821) – effective June 7, 2021**
 - o This bill will require more oversight over school districts entering into agreements with contingency fee lawyers by designating certain amendments to existing contracts with contingency fee attorneys as stand-alone contracts, subjecting them to review.
- **Omnibus pandemic bill, business liability/insurance protections for contractor (SB 6) – effective June 14, 2021**
 - o The omnibus bill is geared toward liability protections for business owners and contractors. Specifically, the bill raises the requirements for an individual to sue a company, or another individual, for exposure to COVID.
 - o In addition to other requirements, an individual is exempt from liability for injury or death caused by exposing an individual to COVID unless it is shown that: (1) they knowingly failed to warn the individual of, or remediate a condition, that the person knew was likely to result in the exposure of an individual to the disease; (2) they knowingly failed to implement or comply with applicable government standards and (3) reliable scientific evidence shows that the person's failure to warn the individual of the condition, remediate the condition, or implement or comply with government standards was the cause of the individual contracting the disease.
- **Reform litigation abuse over commercial vehicular accidents (HB 19) – effective Sept. 1, 2021**
 - o This bill is intended to help protect the commercial trucking industry from frivolous lawsuits by raising the requirements for bringing a lawsuit.
 - o Specifically, the bill requires legitimate evidence that the truck was a cause of the accident, and that injuries arising from a commercial vehicle accident are more fairly presented to a jury.

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CONSTRUCTION AFTER THE PANDEMIC: THE LINGERING CHALLENGES FACING SMALL BUSINESSES IN THE INDUSTRY

BY: *GPAUL HOLLIMAN, SEDALCO, INC.*

While most of the material provided within each issue of the Texas Merit Shop Journal is close to home for each of us, it is important to be aware how federal activities affect Texas and how fortunate our citizens are to live in a state with one of the hottest construction markets in the country that uses common sense regulatory and legislative approaches for a business-friendly environment.

However, as we are not immune to construction industry trends and would be deeply affected by any federal policies that would undermine the economic comeback from the COVID-19 pandemic. In Washington D.C., as congressional committees begin to formulate the policy provisions that will make up the \$3.5 trillion budget reconciliation bill, titled the Build Back Better Act, ABC National sent a letter to the relevant committees highlighting the dangers of some of the tax and labor policies that are in the bill. Citing the many economic indicators that ABC measures periodically, ABC's vice president of legislative and political affairs, Kristen Swearingen, noted the small businesses in the construction industry are still recovering from the lingering effects of the COVID-19 pandemic, arguing that many are facing new challenges like increased material prices and an exacerbated shortage of skilled labor.

I have included an excerpt from the letter referred to above, as I believe it provides the necessary economic context on the ongoing challenges facing the construction small businesses as well as justification for the merit shop construction industry's opposition to the Build Back Better Act, the budget reconciliation measure to come.

EXCERPT FROM LETTER:

According to ABC’s analysis of recent data released by the U.S. Bureau of Labor Statistics, the construction industry added 11,000 net new jobs in August 2021. However, the nonresidential construction industry gained just 2,900 net jobs for the month, while the residential sector accounted for the remainder of the gains. Further – while nonresidential specialty trade contractors added 7,500 jobs for the month, heavy and civil engineering lost 2,100, and nonresidential building shed 2,500 jobs.

Overall, the industry has recovered 886,000 (79.6%) of the jobs lost during earlier stages of the pandemic. The construction unemployment rate fell to 6.1% in July 2021, remaining well above unemployment across all industries, which declined from 5.9% in June to 5.4% last month.

ABC’s Construction Backlog Indicator, a forward-looking, national economic indicator that reflects the amount of work already under contract but not yet performed by commercial, industrial and heavy highway/infrastructure contractors, found that in August 2021, backlog fell sharply to 7.7 months in August, down 0.8 months from July 2021 and down 0.3 months from August 2020.

Additionally, for smaller construction businesses – classified as those with annual revenues of less than \$30 million – backlog fell from 7.9 months in June 2021 to 7.4 months in July. According to these metrics, the smallest construction businesses are still grappling with the lingering effects of the pandemic and, importantly, with the economic recovery underway, should not be exposed to anti-growth policies proposed in the 2021 budget reconciliation bill, the Build Back Better Act.

Additionally – ABC’s Construction Confidence Index readings for sales, profit margins and staffing levels all fell modestly in August but remain above the threshold of 50, indicating expectations of growth over the next six months. Contractors appear relatively confident about the future despite relatively high material prices and expanding labor shortages, although rising COVID-19 case counts have rendered them slightly less confident as of July.

In 2021, construction companies will need to hire 430,000 more workers than they employed in 2020, according to an analysis of U.S. Bureau of Labor Statistics data. This is evidence that the construction industry is powering America’s recovery and economic engine; however, restrictive policies that would limit the pipeline of skilled workers entering the construction industry will not help solve this ongoing problem. On top of this current demand, any significant increase in infrastructure spending would exacerbate the skills gap, as the analysis also revealed that every \$1 billion in extra construction spending generates an average at least 5,700 construction jobs. If Congress passes the \$1.2 trillion bipartisan Infrastructure Investment and Jobs Act (IIJA), ABC urges Congress to not pair it with the costly tax and labor consequences of the \$3.5 trillion 2022 budget reconciliation bill.

All in all, 2021 has been another challenging year for many in the construction industry so far, especially for the smallest contractors. However, ABC sees this data as further proof that the construction industry remains poised to continue to lead the economic comeback of the United States, as long as Congress avoids imposing harmful tax and labor policies on small businesses.

As Congress continues to consider further recovery legislation, I urge readers to monitor ABC’s frequently published economic indicators at abc.org/economics, as they provide a useful national context to what we are seeing in our own backyard.

★ ★ ★

Thank you to Vance Walter, Melanie Pfeiffenberger and Kristen Swearingen from ABC National for contributing to this article.

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CENTRAL TEXAS CHAPTER



ABC Central Texas is celebrating in the second half of 2021! In October, we celebrated our members with our Excellence in Construction awards banquet. We recognized our 34 STEP recipients and eleven Chapter Safety Excellence Award winners. Additionally, 28 projects were recognized with an eagle or merit award.

This fall, ABC Central Texas launched its craft training program! On Sept. 13, we started a Construction Orientation Readiness Education (CORE) class, a prerequisite for our upcoming apprenticeship program, with students in four trade areas. This program will feed into our registered apprenticeship program for plumbing, sheet metal, HVAC service technician and pipefitting. As an association, we are committed to workforce development and filling the need for training a skilled workforce in Central Texas.



Continuing our commitment to workforce development and safety, we welcomed Greg Sizemore, ABC's vice president of workforce, development, safety, health and environmental, to discuss total human health initiatives with our members. The suicide rate in construction is four times greater than the national average, and construction workers are at a higher risk for suicide. As a chapter, we are working on initiatives to fight this crisis in our industry.

Our annual dove hunt was held on Sept. 1 and raised awareness for our government advocacy work in the Central Texas area and with ABC of Texas. Although only in its second year, this event is quickly becoming a favorite among our members!

GULF COAST CHAPTER



ABC Texas Gulf Coast is proud to report that this year 27 members received awards in the world-class STEP Safety Management System recognition program. This is a chapter high for recent years! Not only was there improvement on previous year's participation, but also 13 of those members earned Diamond level, which is the highest level of achievement. Founded in 1989 as a safety benchmarking and improvement tool, STEP has evolved into a world-class safety management system that dramatically improves safety performance among participants regardless of company size or type of work. Participating ABC member firms measure their safety processes and policies on 25 key components through a detailed questionnaire with the goal of implementing or enhancing safety programs that reduce jobsite incidents. Using these proactive safety practices reduces recordable incidents by up to 85%, making the best-performing companies 655% safer than the industry average. The ABC Texas Gulf Coast members see the value in STEP,

but more importantly the value of making safety part of their company's DNA which leads to the safety and well-being of their employees. All 27 participating members are now eligible for the ABC National Safety Excellence and the Construction Users Roundtable Construction Industry Safety Excellence Awards due to their outstanding achievements.

The ABC Construction Exhibition is an event held by ABC Texas Gulf Coast for junior and senior career and technical education (CTE) students from the eight local high schools. This event is designed to give the students hands-on experience in the trades of the local industry. Students have the opportunity to try out various crafts such as scaffold building, heat tracing, instrumentation, carpentry and the list goes on! New this year will be drones and robotics with a special focus on safety, showcasing fall protection and dropped objects among other topics. It is important to engage the students and give them actual hands-on tasks for them to get the best understanding of the various trades. The ABC Texas Gulf Coast members love participating in this event and helping their future workforce decide what crafts are best suited for them. Although COVID has thrown many challenges at the ABC Construction Exhibition, ABC Texas Gulf Coast is adamant about reaching the students and continuing to develop the local workforce.

GREATER HOUSTON CHAPTER



Leadership Panel — Members of ABC Greater Houston's LOGIC Committee (Ladies Operating for Growth in Construction) held its annual Leadership Panel event at Harvey Builders' office in Houston.



Casino Night — ABC Houston members enjoyed the annual Casino Night event which raised funds for the ABC Greater Houston Scholarship Foundation.

The Houston Chapter hit the ground running earlier this year, and we haven't stopped since! Committee meetings are back to being held in person with virtual options continuing for the foreseeable future, events have been sold out and constant, and as of this month, we have resumed Peer Group Calls to keep members informed about any COVID-19 changes.

In August, the Chapter's women's committee, LOGIC (Ladies Operating for Growth in Construction), hosted a Leadership Panel event at Harvey Builders where over 60 ladies listened to a panel of industry leaders discuss work/life balance, navigating career changes and leadership experience.

Also in August, the Chapter held its annual Casino Night, where funds were raised for the Scholarship Foundation. Over 200 attendees participated in the event!

In September, ABC Greater Houston had the opportunity to meet with two representatives to discuss important construction-industry related topics, and looks forward to continued relationships with both Rep. Lizzie Fletcher and Rep. Sylvia Garcia. On Sept. 8, the Chapter held a Zoom meeting with Representative Fletcher and discussed several legislative items that are a priority to the Greater Houston Chapter and to ABC as a national organization. A few of the

items discussed were the 2022 Budget Reconciliation Package, The Protecting the Right to Organize (PRO) Act and the Infrastructure and Jobs Act. The representative listened to the Chapter's concerns and asked for members' input on job creation and retention relating to House District 7.

On Sept. 16, 2021, the ABC Greater Houston Chapter held a Zoom meeting with Representative Garcia. Representative Garcia has more construction workers in her district than anywhere else in the nation. During the call, members discussed the PRO Act and the Infrastructure Package that is being finalized in Congress. The members on the call expressed commitment to diversity, workforce training and providing jobs to the 67,919 construction workers in House District 29.

In September, the Chapter held its annual PAC Clay Shoot, which raised funds for its political action initiatives.

In October, the Chapter will have its annual Excellence in Construction Awards Gala, 2022 Planning Conference in Galveston, as well as young professionals' and women's events.

As 2021 starts to wrap up, the Greater Houston Chapter looks forward to another busy year in 2022 and the continuation of serving Houston members!



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SOUTH TEXAS CHAPTER



With the end of summer comes change ...

The South Texas Chapter is moving to a larger space to accommodate multiple meetings and education activities – almost 50% larger. While the current space has served the Chapter well for the last 10 years, the Chapter vision has created opportunities that would be better served with a larger facility. Luckily the move is just across the parking lot.

A chapter constant for 2021 are the numerous events that are larger than ever, such as the August Excellence in Construction Awards banquet or even sold out, such as September's Fall Golf tournament. And the events for the remainder of the year appear to follow the same trend – Fishing Tournament in October and the Sporting Clays Shoot and Barbeque Cook-off in November.

Another constant for 2021 is the hybrid meeting format. As a result of last year's COVID restrictions, acceptance and in some cases preference, of combined virtual and in-person board and committee meetings is now the norm. However,

there are occasions where nothing beats in person such as education programs. The 2021/2022 apprenticeship school year kicked off in September with the largest group of future craft professionals and an additional trade.

The Chapter met with Rep. Chip Roy to present him with his "Champion of the Merit Shop" eagle award. Another great opportunity to chat about priority issues and the direction of the country. And the Chapter continues to be engaged with local agencies to address concerns and continue to improve the plan review, permitting and inspections processes. What can take months in some cities only takes a few weeks as a result of the dialogue between the regulated industry and the regulators.

This fall, the Chapter retreat will be held with the theme being "Building Better Relationships." The focus is designed to create an energy level that will attract new members, retain existing members and secure greater involvement and engagement. 2021 saw the Chapter attain 94% retention and membership growth by midyear, and the board would like to continue the momentum into 2022.

TEXO CHAPTER



The TEXO Chapter has been very busy during the summer months in meeting our members' needs with social events, safety, professional development and workforce training.

During the third quarter of this year, TEXO members continued to see an increase in commercial projects even in the midst of dealing with material shortages and unprecedented spikes in material costs.

TEXO has continually provided our members with information related to the ever-changing market conditions and supply side conditions of the post-pandemic recovery.

The TEXO Safety division trained over 800 members during the quarter in several training opportunities which included OSHA 30-Hour Course, excavation hazards, Medic First Aid/CPR and TEXO Safety First program. TEXO continues to remain the leader in the North Texas Construction industry by promoting safe building practices through training, safety initiatives and specific programming for member firms.

Several social events were held during the past three months that several hundred members participated in and that included TEXO/AIA event, TEXO Sporting Clay Tournament and Happy Hours, and the most unique and exciting event during the quarter was the TEXO Outstanding Building Awards held at the field at AT&T Stadium, home of the Dallas Cowboys.

As for providing opportunities in professional development and training tailored to all industry skill sets, the Chapter held courses on Leadership training, Effective Communication Skills, Time Management, Lean Building and Law 101 for Contractors.

The TEXO Government Affairs Committee and staff were very active in reporting the success we achieved during the Texas legislative session as well as taking an active role in participating in the Legislature's three special sessions.

TEXO has established outstanding relationships with several local school districts to provide safety and training as we prepare students for the opportunity to enter the many areas of commercial construction available to make a career in.

TEXO has a robust fourth quarter of the year planned as the year comes to a close.

DOL Announces Actions to Reduce Heat-Related Illness

As part of an interagency Biden administration effort to protect workers from the hazards associated with extreme heat, indoors and out, the U.S. Department of Labor's Occupational Health and Safety Administration announced the following actions in a Sept. 20 press release:

- Issuing an Advance Notice of Proposed Rulemaking on heat injury and illness prevention in outdoor and indoor work settings. OSHA is expected to issue the rulemaking in October, which will include a comment period for the public to offer input.
- Implementing an enforcement initiative on heat-related hazards to prevent and protect employees from serious heat-related illnesses and deaths while working in hazardous, hot indoor or outdoor environments. The initiative prioritizes heat-related interventions and inspections of work activities on days when the heat index exceeds 80 degrees Fahrenheit. Employers will be encouraged to implement proactive interventions, such as water, rest and shade, and other important prevention measures such as acclimatization of new or returning workers.
- Developing a National Emphasis Program on heat hazard cases, which will target high-risk industries and focus agency resources and staff time on heat inspections. The 2022 National Emphasis Program will build on the existing Regional Emphasis Program for Heat Illnesses in OSHA's Region VI, which covers Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
- Forming a National Advisory Committee on Occupational Safety and Health Heat Injury and Illness Prevention Work Group to provide better understanding of challenges and to identify and share best practices to protect workers.

The press release also states that OSHA Area Directors across the nation will institute the following:

- Prioritize inspections of heat-related complaints, referrals and employer-reported illnesses and initiate an onsite investigation where possible.
- Instruct compliance safety and health officers, during their travels to job sites, to conduct an intervention (providing the agency's heat poster/wallet card, discuss the importance of easy access to cool water, cooling areas and acclimatization)



or opening an inspection when they observe employees performing strenuous work in hot conditions.

- Expand the scope of other inspections to address heat-related hazards where worksite conditions or other evidence indicates these hazards may be present.

The OSHA initiative applies to indoor and outdoor worksites in general industry, construction, agriculture and maritime where potential heat-related hazards exist.

For additional information, see ABC general counsel Littler Mendelson's analysis, *OSHA Announces Increased Focus on Heat-Related Hazards*.

ABC National will continue to monitor the above-referenced actions and plans to offer input on behalf of our contractor members and provide updates in the Beltway Blueprint as well as *Newsline*.

Article Credit: Associated Builders and Contractors, *Newsline* E-Newsletter

www.abc.org/News-Media/Newsline/entryid/19001/dol-announces-actions-to-reduce-heat-related-illness

ABC Updates COVID-19 Vaccine Toolkit with Latest Resources

In light of changing guidance regarding vaccine policies, ABC has updated resources on the COVID-19 Vaccine Toolkit as part of the Coronavirus Update webpage to help inform and educate members about the latest available resources and information on the COVID-19 vaccine.

The webpage, which includes information from the Centers for Disease Control and Prevention and the U.S. Equal Employment Opportunity Commission, is organized in seven different categories so that members can easily navigate through the available resources:

1. COVID-19 Vaccines – Important Things to Know
2. COVID-19 Vaccination for Workplaces
3. EEOC Guidance on EEO Law and COVID-19 Vaccination
4. COVID-19 Vaccine Mandates
5. Common Questions Regarding COVID-19 Vaccines
6. Additional Resources
7. ABC National Webinars

Disclaimer: Issues related to COVID-19 vaccination in the workplace are governed by various laws and regulations. The resources available on the COVID-19 Vaccine Toolkit webpage do not convey or constitute legal advice, nor are they intended to be acted upon as such. Employers should consult with counsel for guidance on legal questions related to COVID-19 vaccinations in the workplace.

Article Credit: Associated Builders and Contractors,
Newsline E-Newsletter

[www.abc.org/News-Media/Newsline/entryid/18994/
abc-updates-covid-19-vaccine-toolkit-with-latest-resources](http://www.abc.org/News-Media/Newsline/entryid/18994/abc-updates-covid-19-vaccine-toolkit-with-latest-resources)



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*ABC 2019 Safety Performance Report, abc.org/spr



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