



Subcontractors Association of the Metroplex

PUNCH LIST

The voice of the Subcontractor's Industry



Subbie Sam Says

- If you bid all your jobs with a profit, your patience will be rewarded.
- If you keep up with your accounts receivable aging, it's a lot easier to collect your money.
- Have you sent out your notices of unpaid accounts on a timely basis?

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2011 LEGISLATIVE ROUND UP

While, for a year in which all expectations were for the Legislature to do nothing but run around screaming like Chicken Little over the budget deficit, the 42nd Legislature has turned out to be a relative decent one for construction interests. Several bills of significant value to subcontractors have passed, and have been to Governor Perry for signature.

HB 1456 - Lien/Bond Claim Release and Waiver Forms

**Sponsor: Rob Orr
District 58, Burleson
Co-Sponsor: Dr. Robert Duell, Greenville**

HB 1456 has, for the first time, created significant statutory requirements for the contents of lien and bond claim waivers used in the course of construction including useful limits on the content of such forms, and a statutory requirement that, for a waiver in consideration of payment to be effective, the payment must actually have been received. While this measure was significantly opposed by many in the general contracting community, the experience in other states with similar (or stronger) statutes has been that statutory forms help to reduce the misapplication or failure of payment of funds, and fraudulent use of lien and bond claim waiver forms. This legislation should

be of significant value to subcontractors in protecting their rights against dishonorable contractors. In addition, of course, this legislation is beneficial to the many honest and honorable general contractors, who do not cheat their subcontractors with fraudulent lien release forms, because they will no longer have to compete against this dishonest practice by bad general contractors.

HB 1390 - Mechanic's Liens for Retainage

**Sponsors: Joe Deshotel, Port Arthur and Dwayne Bohac, Houston
Senate Sponsor: Craig Estes, Wichita Falls**

Texas law has, for a long time, mandated that owners on projects withhold retainage in the amount of 10% from payments to general contractors, but Texas lien law has, nevertheless, always required that, in order to be entitled to claim a lien against property for unpaid retainage, a derivative claimant (such as subcontractors) was required to send notice of unpaid account, throughout the project, or a notice of retainage agreement, at the beginning of the project. This has always been a problem because the required form of a notice of unpaid account includes a harsh demand for payment, which offends general contractors who are properly withholding retainage until completion of the job, or a statutory notice

of retainage agreement at the beginning of the project, which irritates general contractors because it tends to disclose the value of their subcontracts, information which they (rightfully) consider proprietary.

Under the provisions of HB 1390, subcontractors will now be entitled to claim mechanic's liens as to retainage for a reasonable period after completion or abandonment of a construction project, without having to first send notices to project owners. This common-sense approach is appropriate, because everybody in the construction process knows (or should know) that retainage is being withheld, and dishonest property owners should not get away without paying retainage just because a subcontractor missed its notice date as to retainage only. This legislation will bring Texas into line with many other states, and is a welcome change.

SB 539 - Attorneys' Fees for Mechanic's Lien Issues

**Senate Sponsor: John Carona, Dallas
House Sponsor: Tim Kleinschmidt, Austin**

SB 539 makes a modest change in the provisions of Chapter 53, Texas Property Code, relating to enforcement of Mechanic's liens.

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IMIGRATION AND CONTRACTING



Elena Karenova (above)
Bev Clark and Pam
Thompson (Below)



Texas State Capitol

We welcomed our friend, Elena Karenova to present at our May meeting. Many of us rely on first generation immigrants to man our projects with reliability and skill. Many of these people are not legally in the country, but are essential to getting our projects built and our contracts fulfilled. As employers, we look upon our staff as family, not just numbers, and Elena is the

recognized expert in finding legal ways to keep these worthwhile individuals in the country with a legal status and by doing this, she keeps us, the employers, and our valued employees out of trouble.

we could prove that there were not replacements in the workforce that were available. She also told us that there are dangers from the unions salting our companies with plants to try to unionize our companies.

Elena commented that during the times of low unemployment, it was much easier to get legal status for our workers because

Elena brought us a heartfelt program on the immigration issues facing our industry and our country.

JULY MEETING

Will Newton, Executive Director of the National Federation of Independent Business (NFIB) in Texas will report to us on the 2011 Legislature and what it's done to, done for, or not done for small business. NFIB is a champion for independent business owners, and is very tightly connected with the Texas

legislators. He has also completely dedicated to improving the lot of small business owners. Will and his staff have tracked every bill that would impact us as business owners and influenced the outcome to our benefit.

This is a don't miss meeting. What you don't know can really hurt you. The laws passed in this session may be some help to you, or may be a burden to your company.

On top of all of this, he's an entertaining speaker.

SAM has partnered with the NFIB as part of the coalition to fight the Margins Tax.

New Member Highlight - JTS



Above, Tower Construction by JTS

SAM welcomes new members Kim Sheffler and Roze Kroft from JTS

Johnston Technical Services, Inc. (dba JTS) has achieved a reputation in the wireless and wireline infrastructure industries by delivering quality turn-key integrated solutions to its customers in a timely manner. Founded by Jim Johnston in 1988, we delight our customers in exceeding their expectations due to the industry knowledge, and professionalism we provide. We can provide services to help you quickly and economically reach your networking goals. We pride ourselves on

our flexibility and rapid deployment. JTS began 23 years ago, specializing in voice, video, and data networking. JTS had it's beginnings specializing in the installation of computer networks over wireless systems for rural banks and medical clinics. Since that time, JTS has been integrating voice, data and video systems over copper, fiber and wireless systems for government entities, hospitals, and schools as well as private users such as banks and oil & gas compa-

n i e s . JTS is a veteran-owned small business, specializing in electronic systems integration, including turn-key microwave networks, low voltage networks (including CCTV), and tower installation services. JTS has a certified RCDD on staff, ComTrain certified tower climbers, a State of Texas Security Contractor License, and Texas DIR and TASB BuyBoard contracts.

NEWS FROM AUSTIN, CONTINUED FROM PAGE 1

relating to enforcement of mechanic's liens. The law as it exist today allows that a court "may" award attorney's fees as may be equitable and just in the adjudication of mechanic's lien issues. The word "may" is replaced with the word "shall" in the statute, by operation of this legislation, thus requiring that a court award attorney's fees to the prevailing party in a mechanic's lien action.

This one may be a double edged sword — one could easily see that the requirement that attorney's fees be awarded could be very harmful to an inexperienced or naive subcontractor which, trying in good faith to enforce its rights by mechanic's liens, ineptly filed a lien which didn't comply with the statute. At the same time, of course, the court still has broad discretion because its mandate to award attorney's fees is still subject to the court's "equitable and just" standard — a standard which courts can carry a long way to do what they want.

HB 2093 - Consolidated Insurance Programs and INDEMNIFICATION REFORM

Sponsor: Rep. Senfronia Thompson, Houston
Senate Sponsor: Leticia Van de Putte, San Antonio
Honorable Mention: Sen. Robert Duncan, Lubbock, Rep. Robert Smithee, Amarillo

This one is a remarkable bill — the original bill filing was a fairly comprehensive reform of the things we call "CIPs" — Controlled Insur-

ance Programs (OCIP/CCIP). The fairly comprehensive reform was largely gutted with a committee substitute, which reduced the bill's effect to essentially and only requiring that, in a controlled insurance program which provided liability insurance (most do), the controlled insurance program would be required to provide at least three years of completed operations coverage. Three years is better than nothing, one supposes, although contractors are generally on the hook for 10 years, being the statute of repose for construction projects in Texas.

But, in a remarkable last-ditch minute turn of events, the contents as the indemnification reform legislation, which had been introduced by Senator Duncan and Representative Smithee, and which had essentially died on the vine in committee, was attached to HB 2093 in a floor amendment, and this remarkable piece of legislation has passed both Houses. The indemnification reform is a wonderful piece of legislation, in that it substantially limits the ability of parties to construction contracts to shift risks for their own negligence onto the contractors performing the work. This benefits general contractors, subcontractors, and everyone else in the construction chain. Notably, it does not apply to residential construction or in the oil patch.

This bill also excludes homebuilders, municipal (city-owner) projects, oil and gas projects and railroad work from its effects — but these players already have similar

laws in effect which achieve similar purposes.

While the indemnification reform had been agreed-upon consensus legislation during the 42nd Legislature, that legislation was killed when the whole voter i.d. issue gobbled up and killed all manner of legislation at the end of the session in 2009.

Some powerful forces, including the trial lawyer lobby, and various owner and general contractor interests, are apparently lobbying for the bill to be vetoed by Governor Perry. There has been a lot of controversy surrounding this bill, and its last-minute expansion of purpose, so a little contact with the Governor's office to urge that he not veto House Bill 2093 would not be a bad idea.

And Now For Act 2 . . .

Of course, the silver lining has got to have a cloud and, in our case, the cloud is that the Legislature has not succeeded in passing a budget for the next biennium. As a result, a special session is in the offering, and who knows what can happen then. In particular, there are many pushing for greater business taxes (or as they call it, "closing loop holes in business taxes"). Keep your eyes out for what might happen there.

Copies of the bills referenced in this article are available for download at the SAM website, www.sam-dfw.org in the members only area.

Spike Cutler is Sam's legal Counsel and recognized Subcontractor advocate



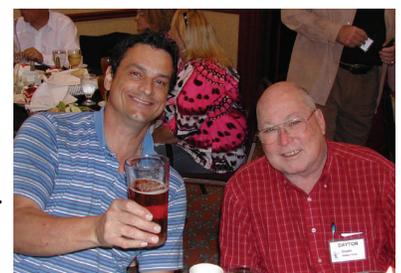
David Stepich and Tony Wyatt from T&D Systems.



Amanda Rogers from Chaparral Welding. Good to see Amanda back, healthy and happy!



Robin Bust of BSB Construction



SAM President, James Mayhew of Apex Services and Dayton Choate of Dobson Floors



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The Subcontractors Association of the Metroplex was founded with the purpose of creating an affordable forum for Subcontractors to exchange information and learn from each other how to be better business men or women.

Sam is a member of the National Subcontractors Alliance, the largest Subcontractors association in the USA, and also a member of the Association of Specialty Contractors where we have a voice in National Legislation.

Sam is also allied with the National Federation of Independent Business who has a voice in the Texas Legislature on small business issues.

Your Source for Subcontractor's information.



Visit us at:
<http://www.sam-dfw.org>



Our Association Officers

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If you're not a member of SAM,
you should be.

Call Pete Snider for a membership application.

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**SUBCONTRACTORS—
THE ONES WHO
REALLY BUILD THE
BUILDING**