

# LEGISLATIVE UPDATE

*March 2, 2011*

[CLICK HERE](#) *to be directed to Texas Legislature On-Line homepage where you may look up any bill before the legislature by bill number*

With the March 11 deadline for introducing bills fast approaching, Governor Perry's proposed tort reform package is expected any day. The bill is expected to have several elements, including:

- a loser pays provision;
- an expedited trial procedure for claims for \$100,000 or less;
- a provision barring "implied causes of action."

It is still unclear who will sponsor the measure in the House and Senate.

Others bills of interest have been filed in the past two weeks. Some of the most notable of these are:

- S.B. 21 by Sen. Tommy Williams (R-The Woodlands), which creates a mechanism for a potentially liable person to establish a voluntary compensation fund in claims involving an event or product that causes at least two deaths, bodily injury to at least five persons, or damage to real property owned by at least five people;
- H.B. 1427 by Rep. Tryon Lewis (R-Odessa), which repeals Sec. 33.004(e), CPRC (60-day limitation on joining a person designated as a responsible third party to avoid tolling of statute of limitations);
- H.B. 958 by Rep. Paul Workman (R-Austin)/S.B. 561 by Sen. Jeff Wentworth (R-San Antonio), creating a diminishing statute of repose in construction defect cases (10% per year from date of substantial completion);
- S.B. 875 by Sen. Troy Fraser (R-Horseshoe Bay), which establishes an affirmative defense to a nuisance or trespass claim if the defendant's

actions were authorized by rule, permit, order, license or other form of authorization by the federal government and the defendant was in general compliance with such government authorization or received enforcement discretion from federal authorities;

- **S.B. 726 by Sen. Jose Rodriguez (D-El Paso), which creates a \$13 million fund to finance legal aid and the State Law Library by increasing court costs for convicted defendants in municipal and justice courts and imposing a \$2 document fee for documents filed with the county clerk; and**
- **H.B. 1890 by Rep. Allen Fletcher (R-Tomball), which creates a civil cause of action for barratry and allows a client to void a contingent fee contract procured by barratry within four years of the date the client knew or should have known the contract was voidable.**

In other legislative news, S.B. 18, the omnibus eminent domain reform bill, has passed the Senate and is now awaiting hearing before the House Land and Resource Management Committee. Voter identification legislation and legislation mandating that a woman seeking an abortion undergo a sonogram have also passed the Senate. Voter identification was heard in House committee on February 28; sonogram legislation (S.B. 15) has been set on the House calendar for today, March 2.

Both chambers are in the process of hearing their respective appropriations acts, which make deep cuts in public and higher education, public safety, and health care programs. Rep. Jim Pitts (R-Waxahachie), chair of the House Appropriations Committee, has filed a bill authorizing the use of \$4.3 billion in the Rainy Day Fund to pay off the budget shortfall in the current biennial budget. This leaves open the question of whether all or part of the remaining \$5 billion expected to be available in the fund will be used for the next biennium's budget in order to offset some of the proposed cuts.

Thus far, there is no evidence that a tax or general revenue bill will be considered under any circumstances, although discussions in the Senate indicate some support for expanding the franchise tax base to gain about \$2 billion a year in additional revenue. It appears, however, that the House, which must originate revenue bills, prefers an interim study of the revised franchise tax, possibly resulting in the replacement of the tax next session. To date there has been no discussion of expanding the sales tax to include professional services or of increasing occupation taxes, though these issues could enter the picture after the full implications of the budget cuts are clearly known. The TADC will be monitoring this closely.

Thank-you to everyone who has volunteered to analyze legislation and make contact with their legislators. Detailed bill analyses are an absolutely vital component when preparing legislative testimony to present before House and Senate Committees and personal contact with legislators is important in order to help them understand the

practical implications of proposed legislation affecting the civil justice system. If you wish to volunteer to make contact with your local legislators or review proposed legislation, please alert the TADC office.

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**REMINDER**

**2011 TADC Spring Meeting**

March 30-April 3, 2011 - Hyatt Regency on Lady Bird Lake - Austin,  
Texas

Don't miss this Seminar *(program link below)*

*A 9.0 hr (with 3.00 hrs ethics) CLE Program Featuring:*

The Honorable Sam Sparks, U.S. District Judge, Western District of Texas  
Chief Justice Wallace Jefferson and Justice Paul Green, Texas Supreme Court  
District Judge Karen Gren Johnson & outstanding lawyers  
and litigators Michael Huddleston, David Chaumette, Greg Cokinos, Ed Burbach,  
Harriett O'Neill  
and Craig Enoch to name but a few!

**PLUS the TADC Legislative Day and Breakfast with the  
current and former members  
of the Texas Supreme Court!**

**[CLICK HERE](#) for registration materials. Sign up today!**