



Texas BOMA Legislative Wrap Up

The 87th Legislature has concluded. This session the legislature tackled many important and controversial issues as the state was still dealing with the impact from the COVID-19 pandemic and winter storm that caused a power outage across our state. Below are the important bills that will impact the commercial real estate industry.

COVID-19 AND THE PANDEMIC RESPONSE

A top priority for Texas BOMA this legislative session was civil liability protection for businesses that were open during the pandemic. The Governor and local entities issued numerous executive and/or emergency orders as a way to reduce the spread of the virus and to set up guidelines to help with reopening the state. The commercial real estate sector played a vital role in re-opening and recovery efforts as many businesses and employers relied on building owners and managers to provide a safe, secure and healthy environment in order to bring individuals back to their workplace. There were concerns that business entities could run the risk of being exposed to liability claims even when they made a good faith effort to limit the risk of exposure and infection to tenants, customers and employees while adhering to public health guidelines. In response, the Legislature passed **Senate Bill 6** which will provide retroactive civil liability protections for large and small businesses, religious institutions, non-profit entities, healthcare providers, first responders, and educational institutions.

The legislature also passed **Senate Bill 968** that will help the state better address future public health disasters. This bill includes a provision that prohibits businesses from requiring customers to show proof of vaccination.

WINTER STORM URI

Texas experienced a several winter storm that caused widespread power outages and significant physical and economic damage to residential and commercial buildings. In response, the legislature passed **Senate Bill 2** and **Senate Bill 3** that focused on strengthening the state's electric grid.

Senate Bill 2 modifies the governance structure of the Electric Reliability Council of Texas (ERCOT), the non-profit corporation that has oversight over the state's electric grid. Senate Bill 3 makes sweeping changes that would overhaul the state's electricity market and help ensure power reliability. The bill, among other things, requires the weatherization of generation, transmission, and natural gas facilities within the State of Texas; creates a statewide emergency alert system for future power outage events; creates the Texas Energy Reliability Council that would help coordinate the state's energy regulators, electricity generators and natural gas fuel industry to meet the energy and electric needs of the state; requires the Texas Public Utility Commission (PUC) and Texas Railroad Commission (RRC) to conduct on-site inspections of the facilities to ensure compliance; requires the PUC to review ancillary services; and establishes a wholesale emergency pricing program.

The legislature also passed **House Bill 16** that bans wholesale index price plans for residential and small commercial customers and **House Bill 17** which prevents a political subdivision from adopting an ordinance, regulation, code or policy that would prohibit the connection of residential or commercial



buildings to specific infrastructure based on the type or source of energy that will be delivered to the end user.

PROPERTY TAX REFORMS

Property taxes continues to be one of the largest expenses for Texas BOMA members with many commercial buildings seeing their valuations increase year after year. This session the legislature continued its efforts to reform the state's property tax and appraisal system.

Closing the Loophole in SB 2: In 2019, the legislature passed SB 2 which required voter approval when local governmental entities increase property tax revenue by more than 3.5 percent. The law provided an exemption for taxing entities if there is a disaster declared in the area. There were some jurisdictions that attempted to use the pandemic disaster declaration as a way to increase revenue above the 3.5 percent voter-approval rate back to 8 percent. This session the legislature passed **Senate Bill 1438** which seeks to clearly codify when the disaster exception would apply and for how long. The bill also specifies which types of disasters apply for the exemption (ex: tornado, hurricane, flood, wildfire, or other calamity) and specifically excludes those types of disasters that would not apply (ex: drought, epidemic, or pandemic). Furthermore, **Senate Bill 1427** specifies that for purposes of determining if property in a disaster area was eligible for a temporary property tax exemption, "damage" would mean physical damage.

Equal and Uniform, Appraisal Caps, and Sales Price Disclosure: Texas BOMA was able to prevent the passage of certain property tax reform bills that would have been detrimental to our industry.

- **Equal and Uniform:** Texas law requires appraisal districts to assess property values on an equal and uniform basis, ensuring similar properties are valued in a similar manner. **House Bill 1099** would have restricted the use of equal and uniform property tax appraisal reviews. This bill failed to receive a hearing.
- **Appraisal Caps:** Several appraisal cap bills were filed this session that would have restricted how much property valuations can increase on real property. None of these bills received a hearing.
- **Sales Price Disclosure:** Texas is a non-disclosure state which means that real estate sales prices do not need to be publicly disclosed to a government entity. **House Bill 1101** would have required mandatory sales prices disclosure in real property sales. The bill was left pending in committee.

PERMITLESS CARRY

The legislature passed **House Bill 1927** which makes it legal for a person 21 years or older to carry a firearm without first obtaining a handgun license if they are not prohibited by state or federal law from possessing a handgun. A business may provide notice that firearms are prohibited on the property by posting a sign at each entrance to the property.

INTERNATIONAL PLUMBING CODE

Texas BOMA again supported efforts to require the Texas State Board of Plumbing Examiners to adopt one single plumbing code, the International Plumbing Code (IPC). Current law allows Texas cities to operate under the plumbing provisions of either the IPC or the Uniform Plumbing Code (UPC). However, **House Bill 3803** was left pending in committee and failed to pass.



CONSTRUCTION UPDATE

Several construction related bills were passed by the legislature this session:

- *Clarifying Mechanic's Lien Laws:* Texas law allows those persons working on improvements to real property to put liens on the real property in the event they are unpaid. Each session we have seen efforts from several groups—generally led by the subcontractors—to overhaul the Texas lien law system. Texas BOMA has always supported efforts to clarify our state's lien laws but have opposed efforts to completely change the system. The legislature passed **House Bill 2237** which clarifies the process for mechanic's and materialmen's liens. The bill had four main objectives: to maintain the existing timing and notice concepts under the current law, to make the lien chapter easier to understand, to make a few minor substantive changes in favor of a simpler statute, and to streamline and improve the existing law. The primary substantive change includes the removal of a "Second Month" notice for down-stream subcontractors and suppliers.
- *Contractor liability for certain design defects:* **Senate Bill 219** seeks to create more of a balance between contractors and property owners. The bill limits the liability of contractors for defects in construction that are due to flawed design documents furnished by the owner. The bill would require a contractor, within a reasonable time of learning of the defect, to 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 or bid documents that is discovered by the contractor or reasonably should have been discovered using ordinary diligence, before or during construction.
- *Duty to Defend Clauses:* **House Bill 2116** limits the use of duty to defend clause in a construction contract for engineering and architectural services.
- *Posting Project Information at Commercial Construction Sites:* **Senate Bill 291** requires developers to share their name, contact information, and a brief description of a project at the construction site.

OTHER BOMA PRIORITIES

The following bills also passed the legislature this session:

- **House Bill 900** ensures a landlord is not held liable for damages to the tenet resulting from the execution of a writ of possession in an eviction suit.
- **House Bill 1925** creates a statewide ban on public camping. The bill creates a Class C misdemeanor offense for intentionally or knowingly camping in a public place without effective consent.