

**Legislative Line**



TEXAS  
ASSOCIATION  
OF  
BUILDERS



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Summarizing state legislative and regulatory developments affecting housing and the building industry.

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### Rally Day 2009

*Please join TAB and Governor Rick Perry on Wednesday, February 25 at Rally Day!*



*Join Us*

*Governor Rick Perry*  
*addresses the*

*Texas Association of Builders*

*Wednesday ~ February 25, 2009*

*10:30 a.m.*

*Capitol ~ South Steps*

*Rally Day Luncheon & Events to Follow*

*“Where Texas Builders*

*Make History”*



**Rally Day Schedule**  
**Wednesday, February, 25, 2009**

9 – 10:15 a.m.	Registration at TAB Office (Rally Day Captains)
10:15 – 10:30 a.m.	Opening Remarks at the South Steps of the Capitol
10:30 – 10:45 a.m.	<b>Governor Rick Perry</b> Speaks
10:45 – 11 a.m.	Legislative Agenda & Closing Remarks
11 a.m. – 1 p.m.	Lunch on the Grounds of the Capitol
1 – 5 p.m.	Legislator Visits
5:30 – 7:30 p.m.	TAB Legislative Reception at the Driskill Hotel

**Please contact your local association to register for Rally Day**

Stay for TAB's Winter Board Meetings!  
Thursday and Friday, February 26 and 27  
Driskill Hotel, Austin  
Click to [Register](#) for the TAB board meetings

There will be a lunch/registration fee of \$15 that will be collected by your local association. We look forward to seeing all of you!

***Thank you to our 2009 Rally Day Partners!***



**Texas Panhandle Builders Association PAC**

**81st Legislative Session Update**

**GOVERNOR** - Last Tuesday, Governor Rick Perry declared emergency items for the 2009 legislative session including:

- Legislation to provide supplemental appropriations to state agencies and institutions related to hurricane response and recovery associated with the hurricanes of 2008;
- Legislation to assist public and private entities with recovery from the hurricanes of 2008;
- Legislation to reform the Texas Windstorm Insurance Association (TWIA) and legislation to fund the Catastrophe Reserve Trust Fund related to TWIA;
- Legislation to improve state schools and centers operated by the state of Texas; and
- Legislation to appropriate funds to the Texas Department of Criminal Justice for the purchase and use of screening and detection devices for contraband and personnel, as well as comprehensive security equipment.

Governor Perry said, "By designating these items emergencies, lawmakers are able to begin considering these important issues relating to the safety, security, and recovery of our state."

**SENATE** – On Tuesday, the Senate began referring bills to committee and by the close of session on Wednesday, 350 of the 800+ Senate bills filed so far had been referred to Senate committees. The Senate adjourned from Wednesday until next Tuesday, taking Monday off in honor of Presidents' Day.

**HOUSE** - the House adopted HR 1 by the necessary 4/5 majority to suspend the constitutional provision dedicating the first 30 days of the session to introduction of bills and acting on emergency matters; the second 30 days to committee hearings; and the remainder of the session to act upon bills and resolutions. Without that suspension, the House would not be able to pass any bills in the first 60 days of the session. The resolution passed by a vote of 140 to 3. On Thursday, Speaker Joe Straus announced

committee assignments. After committee assignments, the clerk began referring bills to committees. The first 200 of the 1200+ House bills filed so far were referred to committee. The House adjourned until next Tuesday, also taking Monday off in honor of Presidents' Day.

**PROPERTY** – On Tuesday, Senator Craig Estes (R-Wichita Falls) filed SB 18 to reform the process of eminent domain in Texas. SB 18 reforms the practice of eminent domain by redefining “public use” and creating a “Truth in Condemnation Act,” requiring a bona fide offer and good faith negotiations with compensation for economic loss including diminished access, and ending the practice of government land speculation. Senator Estes said, “I believe one of the most important functions of government is the protection of private property and the interests of property owners. Our ability to own and profit from private property is fundamental to not just our economic liberty, but also our personal liberty. I want to thank Lt. Governor Dewhurst for his leadership on these issues, and his commitment to protecting private property rights with meaningful eminent domain reform.” Lt. Governor David Dewhurst announced that he has prioritized Estes’ bill by giving it a number – SB 18. At a brief press conference on SB 18 with Senators Estes, Glenn Hegar (R-Katy) and Robert Duncan (R-Lubbock), Dewhurst said, “We believe we can come to a consensus that is fair to property owners and fair to the taxpayers.”

**TAXATION** – Representative Mike Villarreal (D-San Antonio) filed HB 866 which directs the Comptroller to study and make recommendations for establishing a “circuit breaker” program in Texas to limit the amount of property taxes that may be imposed on a residence based on the owner’s annual income. The legislation instructs the Comptroller to set up an advisory committee to make recommendations to the Legislature on establishing the circuit breaker program. The advisory committee would include school districts, real estate agents, organizations that work on housing for low and moderate-income families, and other stakeholders. 18 other states have circuit breaker programs that limit property taxes on homeowners for whom the tax payments represent a significant portion of their family’s income. Villarreal said, “We must treat taxpayers fairly as we raise the revenue necessary to invest in schools and other services. At this difficult time, it’s important to provide relief to those families struggling to get ahead on a tight budget.”

On Monday, Representative Bill Callegari (R-Katy) filed HB 979 and HJR 49 to limit annual appraisal increases for commercial properties to 10%. Unlike residential homestead appraisals, which are capped at 10%, appraisal increases for commercial property taxes are not limited by law. In the absence of any limitation, the property tax appraisal values for Texas’ businesses can increase substantially from year to year. These increases force many businesses to pay larger property tax bills from one year to the next. Representative Callegari said, “Under today’s property tax system, business property owners may find themselves on a slippery slope towards paying more and more in property taxes. I have heard from many businesses in my district who have been affected by radical jumps in their property tax appraisals. . . The documented fact that a business’ property taxes can increase by as much as 67% is alarming, particularly when that business’ revenue for that property declined at the same time. Not all businesses have the financial wherewithal to sustain a massive property tax increase. Smaller businesses, particularly those with tighter margins, are hurt too easily under our property tax appraisal system. Any business that receives a higher property tax bill is faced with two options: either pass the costs onto the consumer, or absorb a loss to their investment. On a broader level, the more businesses sustain significant property tax increases, the less they will be able to contribute to the economic growth of this state. As news of our economy continues to worsen, we need policies that ensure that business revenues remain in the hands of businesses, and not in the coffers of government.”

Senator Dan Patrick (R-Houston) announced the filing SB 700 which would put into place numerous new property taxpayer protections. It would:

- Allow homestead exemptions to be applied as far as five years in cases where a homestead exemption was available but the homeowner did not apply;
- Prohibit the use of “highest and best use” analysis in the appraisal process;
- Require appraisal notices to clearly outline the increase in appraisal for the last five years as well as the percentage of increase;
- Lower the rollback rate from 8% to 5% and require increases above that limit to be approved by the voters; and would provide that citizens would no longer be required to petition for a property tax rollback election;

- Require counties with at least 500,000 people to provide electronic protest and settlement processes; and
- Allow appraisal protests to be heard in Justice of the Peace courts if the amount of taxes in dispute does not exceed \$5,000.

Senator Patrick said, “During these hard economic times, taxpayers are screaming out for relief more than ever. You can lose your job in a layoff, lose your house in a hurricane, but you can’t ever shake the property tax man. The legislature cut the tax rate in 2006, but appraisal increases erased any real relief. This year everyone knows values are down, but few have faith their appraisal will reflect our down real estate market. If appraisals do not go down across Texas this spring, homeowners will be outraged. . . It is time we in the Texas Legislature fix these inequities in the appraisal process. This is not just a Harris County issue; it’s a statewide issue.”

To look up any bill, visit the [Texas Legislature Online](#).

## **Speaker Straus Names House Committees**

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On Thursday, Speaker Joe Straus announced committee assignments and stated, “When I became Speaker, I vowed to help the members build a House that would operate fairly and help them bring their best talent forward to address the state’s most difficult challenges. The committee assignments I am making today will draw upon the House’s wisdom and experience and provide an opportunity for new leadership and ideas. We are fortunate to have a House where members want to do what is best and right for Texas and I am confident that they will succeed.” When the House adopted their rules the second week of the session, six House committees were eliminated including: Economic Development, Government Reform, Judiciary, Juvenile Justice & Family Issues, Local Government Ways & Means, and Regulated Industries. The rules added one new committee: Technology, Economic Development and Workforce. Several committees were reconfigured: Border & Intergovernmental Relations replaced Border & International Affairs; Corrections was assigned jurisdiction over juvenile justice issues; Defense & Veteran Affairs replaced Defense Affairs & State-Federal Relations, Judiciary and Civil Jurisprudence combined the former Judiciary and Civil Practices Committees; Pensions, Investments and Financial Institutions combined those two previously separate committees; Public Safety replaced Law Enforcement; the State Affairs Committee was assigned jurisdiction over utility regulation, formerly under the now-defunct Regulated Industries Committee; and Urban Affairs was assigned jurisdiction over land use regulation. The Business and Industry committee will handle issues related to the TRCC.

### **Chairs of the House Committees are:**

- Agriculture & Livestock – Yvonne Gonzalez Toureilles (D-Alice)
- Appropriations – Jim Pitts (R-Waxahachie)
- Border & Intergovernmental Relations – Veronica Gonzales (D-McAllen)
- Calendars – Brian McCall (R-Plano)
- County Affairs – Garnet Coleman (D-Houston)
- Corrections – Jim McReynolds (D-Lufkin)
- Criminal Jurisprudence – Pete Gallego (D-Alpine)
- Culture Recreation & Tourism – Mark Homer (D-Paris)
- Defense & Veteran Affairs – Frank Corte (R-San Antonio)
- Elections – Todd Smith (R-Bedford)
- Energy Resources – Jim Keffer (R-Eastland)
- Environmental Regulation – Byron Cook (R-Corsicana)
- General Investigating & Ethics – Chuck Hopson (D-Jacksonville)
- Higher Education – Dan Branch (R-Dallas)
- House Administration – Charlie Geren (R-Fort Worth)
- Human Services – Patrick Rose (D-Dripping Springs)
- Insurance – John Smithee (R-Amarillo)
- Judiciary & Civil Jurisprudence – Todd Hunter (R-Corpus Christi)
- Land & Resource Management – Dennis Bonnen (R-Angleton)
- Licensing & Administrative Procedures – Edmund Kuempel (R-Seguin)
- Local & Consent Calendars – Senfronia Thompson (D-Houston)
- Natural Resources – Allan Ritter (D-Nederland)
- Pensions, Investments & Financial Services – Vicki Truitt (R-Keller)
- Public Education – Rob Eissler (R-The Woodlands)
- Public Health – Lois Kolkhorst (R-Brenham)
- Public Safety – Tommy Merritt (R-Longview)
- Redistricting – Delwin Jones (R-Lubbock)
- Rules & Resolutions – Ruth Jones McClendon (D-San Antonio)

State Affairs – Burt Solomons (R-Carrollton)  
Technology, Economic Development & Workforce – Mark Strama (D-Austin)  
Transportation – Joe Pickett (D-El Paso)  
Urban Affairs – Yvonne Davis (D-Dallas)  
Ways & Means – Rene Oliveira (D-Brownsville)  
Select Committee on Federal Economic Stabilization Funding – Jim Dunnam (D-Waco)

To see a complete list of individual committee make up, visit the [Texas Legislature Online](#).

Speaker Straus' office released information prepared by the Texas Legislative Council on the diversity of the committee appointments:

- The current partisan make-up of the Texas House is 76 Republicans and 74 Democrats.
- The number of standing committees was reduced from 40 to 34.
- There were 296 positions on substantive committees. With the exception of the Speaker and the Chairs of Appropriations and State Affairs, each member was assigned two slots on substantive committees.
- 18 committees are chaired by Republicans and 16 are chaired by Democrats (last session 30 were chaired by Republicans and 10 by Democrats).
- 15 of the 34 chairs have not chaired standing committees in prior sessions.
- Five of the 34 chairs are African American (compared to four last session).
- Four of the 34 chairs are Hispanic (last session, there were three).
- 11 vice-chairs are Hispanic (compared to five last session).
- Seven of the chairs are women (last session, there were seven).
- Five of the vice-chairs are women (last session, there were five).
- Rural/Urban Breakdown: Urban-23, Rural-11 (Last session, Urban-25, Rural-15).

## **Bills of Interest**

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### **HB 4 (Rob Orr, R- Burleson)/SB 533 (Robert Duncan, R-Lubbock) Relating to eminent domain, including certain limitations, procedures, and standards relating to the use of eminent domain.**

Amends Chapter 2206 of the Government Code and Chapter 21 of the Property Code to provide comprehensive eminent domain reform. Requires a government entity to take a public vote to initiate condemnation proceedings. Requires all the entities having eminent domain authority to send a letter to the State Comptroller's office stating they have this power and under what provision of law they were granted this power. Provides for more pro-property owner requirements in a governmental entity's initial purchase offer and disclosure requirements. Provides that the governmental entity must make at least two good faith offers. Condemnation proceedings must specify a specific public purpose. Allows property owners or their heirs to repurchase the property at the price paid to the owner if the public use goes away or no actual progress was made within 10 years.

**HB 28 (David Leibowitz, D- San Antonio) Relating to requiring notice by a seller of real property of potential annexation of the property by a municipality.** This bill sets forth seller's disclosure language that must be provided to the buyer if the seller has received a notice from a municipality that the property is included in the municipality's annexation plan.

**HB 143 (Ruth McClendon, D-San Antonio) Relating to granting certain counties regulatory authority around military facilities in certain circumstances.** This bill grants certain counties regulatory authority around military facilities to ensure orderly development and eliminate congestion that might interfere with the proper use of the area as a secure location. The bill would require developers to provide notice to and opportunity for comment by military commanders, conduct endangered species studies and pay fees to cover the county's cost of enforcing the regulations. This bill also provides that the new county regulations would apply "regardless of whether a plan for development or real property or plat application for a tract of land has previously been filed" and further provides that the county can enter into an agreement with a municipality to assist in the implementation of the regulations.

**HB 311 (David Leibowitz, D-San Antonio) Relating to certain fees authorized by the Residential Construction Commission Act.** Amends the TRCC Act to prohibit the TRCC from charging homeowners any fees, including a SIRP inspection fee. Makes conforming changes to the Act.

**HB 403 (Mike Villarreal, D-San Antonio) Relating to the capital improvements that a local government may finance with an impact fee.** This bill adds fire stations to the list of "Capital Improvements" that are eligible for impact fee assessments. The bill also authorizes municipalities to exempt nonprofit organizations from paying impact fees.

**HB 463 (Rob Eissler, R-The Woodlands) Relating to swimming pool safety.** This bill mandates that a person who sells or installs a swimming pool provide an enclosure with a gate and a device or system to prevent entrapment by a pool drain. The bill further states that the Texas Health and Human Services Commission may adopt rules requiring that the owners of a pool at a single-family residence install a manual or power safety cover, a self-closing/self-latching gate, an audible alert device on any door with direct access to the pool, or a pool alarm.

**HB 981 (Senfronia Thompson, D- Houston) Relating to consumer protection for and remedies available to a homebuyer whose home does not comply with certain warranties; providing an administrative penalty.**

Creates a new Chapter to the TRCC Act to require the repair of defects and create a home lemon law.

Details:

- Except for mold cases, requires the repair of existing defects within 120 days after certain notice of defect is given to the TRCC.
- Except for mold cases, requires replacement or buy-back of the home if a defect creates a serious safety hazard, substantially impairs the use, or decreases the home's market value by more than 5%.
- For mold cases, the builders shall buy-back the home if the homebuyer provides certain tests showing toxic mold.
- Any home that is bought-back must carry a disclosure that the home was repurchased; the deed that transfers title must be marked with a clear statement that indicates the repurchase.
- Requires builder to reimburse homebuyer for incidental expenses from loss of use and lost wages.
- Homeowner must go through SIRP before applying Chapter.
- Homeowner may not sue unless he/she meets Chapter requirements and exhausts all administrative proceedings provided by the Chapter.
- Requires the TRCC to make an annual report listing the repurchased homes by subdivision and builder name, and include a description of the defects.
- Provides for judicial review of TRCC actions as provided by the Administrative Procedure Act.
- Except as otherwise provided by the Chapter, an appeal initiated under the Chapter may be removed to the Third Court of Appeals District if ANY party files a notice of removal with the district court before the trial in the district court begins.
- Chapter applies to those who "lease" a home from a builder.
- Supersedes DTPA.
- Prohibits contract provisions that override the Chapter.
- Gives homebuilders an affirmative defense that the defect is the result of abuse, neglect, etc.
- The Administrative Procedure Act controls any hearings brought under the Chapter.

**HB 1119 (Valinda Bolton D-Austin) Relating to authorizing certain populous counties to adopt county planning regulations.** This bill authorizes certain populous counties the authority to perform planning functions for the purpose of promoting the public health, safety, morals or general welfare. The planning functions include creating: a comprehensive plan, a zoning map, a zoning change notification and protest procedures, a county planning commission, and a board of adjustment.

**SB 136 (Rodney Ellis, D-Houston) Relating to the global Warming Solutions Act.** This far-reaching bill aims to benchmark the state's greenhouse gas emissions experienced in year 1990 and create a comprehensive plan that will limit future emissions to that same level by year 2023.

**SB 222 (Royce West, D-Dallas) Relating to arbitration and arbitration agreements.** Amends Chapter 171 of the Civil Practices and Remedies Code to prohibit the enforcement of pre-dispute arbitration clauses in employment, consumer or franchise contracts, or "a dispute arising under any statute intended to protect civil rights or regulate contracts or transactions between parties of unequal bargaining power." Authorizes courts, not arbitrators, to decide all challenges to the enforceability of arbitration agreements under the Texas Arbitration Act. Prohibits the enforcement of any arbitration agreement that waives or restricts rights under the U.S. Constitution unless the waiver is knowingly made. Allows an award to be vacated if it "clearly violates fundamental public policy or is the result of manifest disregard of the law." Makes interlocutory orders granting a motion to compel arbitration appealable. Provides that the prohibitions do not extend to arbitration agreements in collective bargaining agreements or arbitration required by law. Provides that Texas law shall determine whether the Texas Arbitration Act applies to an arbitration agreement.

Note: The Texas General Arbitration Act provides substantive and procedural rules that govern arbitration unless otherwise specified by the parties. The Federal Arbitration Act preempts the Texas General Arbitration Act and is broadly applied to transactions involving interstate commerce.

**SB 555 (Robert Duncan - R-Lubbock)/HB 818 (Craig Eiland, D- Texas City) Relating to indemnification provisions in construction contracts.** Amends the Civil Practices and Remedies Code to

add Title 10, Chapter 502. Makes a provision in a construction contract void and unenforceable if it:(1) requires a party (the indemnitor) to indemnify, hold harmless, or defend another party to the contract (or a third party) against a claim caused by the negligence of that other party (the indemnitee; and includes the indemnitee's agent or employee, or any third party under the control or supervision of the indemnitee), and the claim arises from: (a) bodily injury or death, except for the bodily injury or death of an employee of the indemnitor, its agent, or subcontractor of any tier; (b) damage to property; (c) any other type of damage; or (d) a fine, penalty, administrative action, or other action assessed by a governmental entity directly against the indemnitee; or

(2) requires the purchase of additional insured coverage (and any coverage endorsement or provision within an insurance policy providing additional insured coverage) to the extent that it exceeds the scope of indemnity allowed by the Chapter.

To look up any bill, visit the [Texas Legislature Online](#)

## **HOME PAC**

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Contributing to HOME PAC just got easier! Visit the HOME PAC page on the TAB website at [www.texasbuilders.org/homepac](http://www.texasbuilders.org/homepac) and make your contributions online.

Thank you for your generous past support of HOME PAC, the Texas Association of Builders political action committee. TAB's continued legislative success at the Texas Capitol is due to your commitment as a HOME PAC contributor. We encourage you to donate at one of the following annual levels of giving so that you along with the other builder, developer and associate members of TAB may continue to play a crucial role in Texas politics. Whichever level you choose, your donation will have an impact.

**We need *you* to make a difference!**

<b>Capitol Club - \$5,000</b>	<b>Diamond Key - \$3,000</b>	<b>Platinum Key - \$1,500</b>
<b>Gold Key - \$1,000</b>	<b>Silver Star - \$500</b>	<b>Lone Star - \$250</b>

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