

- SUBJECT:** Specifying subcontractor status for workers' compensation
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 5 ayes — Oliveira, Simmons, Fletcher, Rinaldi, Villalba  
2 nays — Collier, Romero
- WITNESSES:** For — George Christian, Texas Civil Justice League; (*Registered, but did not testify*: Michael Chatron, AGC Texas Building Branch; Jon Fisher, Associated Builders and Contractors of Texas; Tom Sellers, ConocoPhillips; Matt Long, Fredericksburg Tea Party; Jim Sewell, Gallagher Construction Services; Mike Meroney, Huntsman Corp., and Sherwin Alumina, Co.; Lee Loftis, Independent Insurance Agents of Texas; Bill Oswald, Koch Companies; Lee Ann Alexander, Liberty Mutual Insurance; David Holt, Permian Basin Petroleum Association; Bill Stevens, Texas Alliance of Energy Producers; Scott Norman, Texas Association of Builders; Cathy Dewitt, Texas Association of Business; Hector Rivero, Texas Chemical Council; Lisa Kaufman, Texas Civil Justice League; Michael White, Texas Construction Association; Lindsey Miller, Texas Independent Producers and Royalty Owners Association; Shannon Rusing, Texas Oil and Gas Association; Tricia Davis, Texas Royalty Council; Perry Fowler, Texas Water Infrastructure Network; Jack Baxley, Texo the Construction Association; John W. Fainter Jr., The Association of Electric Companies of Texas, Inc.; Daniel Womack, The Dow Chemical Company; Stephanie Simpson, Texas Association of Manufacturers; Julie Klumpyan, Valero; Tara Snowden, Zachry Corporation; Dawn Buckingham; Angela Smith)
- Against — Nelson Roach, Texas Trial Lawyers Association; (*Registered, but did not testify*: Celina Moreno, MALDEF; Leonard Aguilar, Southwest Pipes Trades Association; Rick Levy, Texas AFL-CIO; Michael Cunningham, Texas Building and Construction Trades Council; Ware Wendell, Texas Watch; Maxie Gallardo, Workers Defense Project)
- On — (*Registered, but did not testify*: Brent Hatch, Texas Department of

Insurance, Division of Workers' Compensation)

**BACKGROUND:** Labor Code, sec. 406.122(b) provides that a subcontractor and its employees are not considered employees of a general contractor if the subcontractor:

- is operating as an independent contractor; and
- has entered into a written agreement with the general contractor under which the subcontractor has assumed the responsibilities of and is acting as an employer for the performance of work.

Under sec. 406.123, a general contractor may agree in writing to provide worker's compensation insurance to a subcontractor and its employees. In that case, the general contractor is the employer of the subcontractor and its employees only for purposes of workers' compensation laws. A Texas Court of Appeals ruling in *TIC Energy and Chemical, Inc. v. Martin*, noted in January 2015 that these two provisions irreconcilably conflict.

**DIGEST:** HB 1668 would specify an exception to the general rule under current law that a subcontractor and its employees were not employees of the general contractor, which would apply if the subcontractor was operating as an independent contractor and an employer for the performance of work under a written agreement with the general contractor for the provision of workers' compensation insurance.

The bill would take effect September 1, 2015, and would apply to a written agreement entered into on or after that date.