

Wrap-Up for the 85th Legislature

Taxes and School Finance

The 85th Legislature convened with high expectations but little money. That put a damper on an ambitious agenda for property tax and franchise tax relief, as well as school finance reform. Though a number of tax bills passed, the most interesting stories of the session are those of the bills that failed. A surprise overtime would bring one final try in hopes for success, but ultimately the story of the 85th Legislature is one of very modest movement on the tax and fiscal front.

In this research brief we provide an overview of the key bills that lawmakers considered in the regular and special sessions. We'll zero in on the ones that passed, but also talk about the failures, as well as the issues that will likely resurface in 2019. Listed in the table on the next page is a breakdown of the number of bills filed and the number that ultimately passed during the Regular and First Called Sessions of the 85th Legislature.

Property Tax

Over 350 bills amending the Property Tax Code or making other changes to the property tax system were introduced in the regular session. Of that number, only 33 passed. Summaries of all property tax bills that passed may be found on TTARA's website. The following is a summary of 14 of the successful bills.

Bills That Passed

HB 804 by Dale (Regular Session — Appraisal Administration and Records) requires a property owner to send a copy of a notice of appraised value to lessees who are contractually obligated to reimburse the owner for property taxes. The copy must be sent not later than the 10th day after the owner receives the notice. The change does not apply if the property owner and the lessee have agreed in the contract to waive the requirements of the law or if the lessee has agreed not to protest the value of the property. On request, the chief appraiser must send the notice of appraised value to the lessee, but is not required to do so if the appraisal district posts the appraised value of the property on its Internet website not later than the 5th day after the notice of appraised value is sent to the property owner.

Lessees are also granted the authority to designate agents for property tax purposes.

HB 2228 by Murphy (Regular Session — Appraisal Administration and Records) changes the deadlines for filing certain documents:

- (1) Freeport goods exemption applications from the date the appraisal review board approves the appraisal records to June 15;
- (2) allocation applications from May 1 to April 1; if the property was not on the appraisal roll in the preceding year, applications from the 45th day after receipt of the notice of appraised value to the 30th day; 30-day good cause extensions, rather than 60 days, allowed in both situations;
- (3) renditions in counties in which Freeport exemptions are allowed from April 15 to April 1 with an extension to May 1 on written request and another 15 days for good cause; renditions for property regulated by the Public Utility Commission, Railroad Commission, Federal Surface Transportation Board, or Federal Energy Regulatory Commission from April 15 to April 30 with one 15-day good cause extension; and

Bills of the 85th Legislature

Process (Combined House & Senate)	Total # of Bills Regular Session	Bills on TTARA Track	Total # of Bills Special Session	Bills on TTARA Track
Bills Introduced	6,737	720	560	168
Bills Granted Committee Hearing	3,736	720	231	161
Bills Passing Out of Committee	2,936	215	109	40
Bills Passing First House	1,940	155	41	23
Bills Passing Second House	1,253	77	15	4
Bills Sent to the Governor	1,207	72	12	3
Bills Becoming Law	1,163	69	12	3

- (4) notices of protest from May 1 to May 15 or 30 days after delivery of notices of appraised value, whichever date is later; extensions to June 1 for owners of single family residences repealed.

HB 3103 by Darby (Regular Session — Appraisal Administration and Records) defines what “used continually, whether regularly or irregularly in this state” means in order to impose a property tax on tangible personal property used for the production of income, particularly truck fleets. The property must be used three or more times on regular routes or completed assignments occurring in close succession in the year. The bill states that the amendments are a “clarification of existing law and do not imply that existing law may be construed as inconsistent with the law as amended by this Act.” The bill codifies a Comptroller rule regarding the issue of jurisdiction to impose a property tax.

SJR 1 by Campbell and SB 15 by Huffines (Regular Session — Exemptions) provide for a residence homestead exemption for the surviving spouse of a first responder who is killed or fatally injured in the line of duty, so long as the survivor does not remarry. The exemption applies regardless of the date of the first responder’s death. Subsequently qualified homesteads may also be eligible for the exemption equal to the dollar amount of the exemption for the first qualifying property. The exemption applies to the entire year based on qualification. The new law is contingent on voter approval of the constitutional amendment in November 2017.

HJR 21 and HB 150 by Bell (Regular Session — Exemptions) permit disabled veterans to receive partial residence homestead exemptions if they receive the property as a donation from a charitable organization, but pay a portion of the home’s cost. A percentage of the appraised value of the homestead is exempt based on the veteran’s disability rating if the residence is donated at (1) no cost; or (2) “at some cost to the disabled veteran in the form of a cash payment, a mortgage, or both in an aggregate amount that is not more than 50 percent of the good faith estimate of the market value of the residence homestead...” The new law is contingent on voter approval of the constitutional amendment in November 2017. An important change that was added by the conference committee for HB 150 is a reduction in the interest rate from 8% to 5% on deferrals or abatements for the payment of property taxes on the residence homesteads of persons who are age 65 or older or disabled. The change also applies to deferrals or abatements by disabled veterans who qualify for partial exemptions (Tax Code Section 11.22).

HB 3198 by Darby (Regular Session — Open-space Land Appraisal) permits land designated as open-space to continue its eligibility for special appraisal when a lessee of oil and gas leases begins conducting oil and gas operations over which the Railroad Commission of Texas has jurisdiction, if the remainder of the land continues to qualify as open-space.

HB 777 by Ashby (Regular Session — Open-space Land Appraisal) permits land designated as open-space to continue its eligibility when it ceases to be used for agricultural purposes if the owner is a member of the armed

services and is deployed or stationed outside of Texas. The property owner must intend to use the land for agricultural purposes not later than 180 days after the date the owner ceases to be deployed or stationed outside of Texas and must notify the appraisal district.

HB 455 by Metcalf (*Regular Session — Appraisal Review Boards*) allows property owners to participate in appraisal review board hearings by telephone. Evidence must be offered by affidavit and submitted prior to the hearing. Telephone hearings are required if the property owner notifies the ARB 10 days before the hearing; or the ARB proposes that the hearing be conducted by telephone and the owner agrees.

SB 1767 by Buckingham (*Regular Session — Appraisal Review Boards*) clarifies that property owners may present their appraisal review arguments *after* representatives of appraisal districts present theirs. The owner is entitled to present his/her case before or after the district's case in a regular protest hearing, or before, after, or between cases presented by the appraisal district and taxing units in hearings on motions to correct prior year appraisal rolls.

SB 625 by Kolkhorst (*Regular Session — Special Purpose Districts [SPDs]*) creates more transparency in the operation of special purpose taxing districts. The bill instructs the Comptroller to create and make readily accessible a Special Purpose Information Database containing governance, debt, and tax information for any SPD with sales or property taxing authority, outstanding debt, and cash or investments of over \$250,000 in the prior year. SPDs must report annually for purposes of updating the database and noncompliance may incur a \$1,000 penalty. Over 1,800 special districts levied property taxes in 2016, and lawmakers authorized at least 49 more in 2017.

SB 1305 by Nichols (*Regular Session — County Transportation Reinvestment Zones*) abolishes county transportation reinvestment zones. These zones were authorized in 2013, allowing counties to exclude increases in the value of property in a zone from the effective and rollback tax calculations. These provisions limit the amount of property tax a jurisdiction may raise before being subject to a voter petition for an election to limit the tax increase. A number of Attorneys General opinions (including one by now-Governor Abbott) have held that the Texas Constitution does not provide counties authority to create tax reinvestment zones. When a few counties appeared to have made errors in their zone and rollback calculations — intentional or otherwise — adopting much higher tax rates

than what the law allows, the program came under greater scrutiny. TTARA strongly supported the repeal of the well-intentioned, but mismanaged and unconstitutional program.

SB 2242 by Hinojosa (*Regular Session — Boundary Disputes*) deals with a boundary dispute in which San Patricio and Nueces Counties both taxed certain properties and authorizes the Texas Supreme Court to have original jurisdiction to determine the boundary, as well as the allocation of property tax refunds.

Bills that Failed

HB 27 by Springer (*Regular Session — “Dark Stores”*) would have curtailed the use of the “dark store” theory in Texas. In recent years, certain retail property owners have challenged their appraisals on the “dark store” theory—that properties should be valued equally whether the property is vacant or an operating concern. The theory has been rejected in a handful of Texas appeals. Appraisal districts are concerned that, if allowed, the theory could lead to huge value losses. As introduced, HB 27 would have created a new appraisal standard, allowing appraisal districts to ignore the current use of any property—retail or otherwise—and value it based on a potential alternative use. In response, Rep. Springer crafted a more limited committee substitute that applied only to valuation of retail properties on appeal, which passed out of the Ways and Means Committee only to progress no further. TTARA opposed the bill as introduced, but Rep. Springer addressed our stated concerns in the committee substitute. TTARA will oppose future efforts to deviate from generally accepted appraisal practices to determine fair market value. The statutory definition of “market value” is based on the long-accepted concept of willing buyers and sellers establishing the value of property—not what chief appraisers contend the property's highest and best use could be.

SB 2 by Bettencourt (*Regular Session — Property Tax “Reform and Relief”*) embodied the battle cry “property tax reform and relief!” at the start of the regular session of the 85th Texas Legislature. But after a fierce debate over rollback tax rates, local control, and transparency, property tax reform failed in both the regular and special-called session. After seven public hearings around the state by a select committee that he chaired, Sen. Bettencourt introduced SB 2 during the regular session. Ways and Means Committee Chairman Dennis Bonnen introduced his version in HB 4. SB 2 was designed mainly to limit the

growth of property taxes imposed by units of local government. The bill reduced the amount of additional revenue that can be raised by the rollback tax rate for taxing units other than school districts from 8% to 4%, mandated an election in November if a taxing unit approved a tax rate exceeding the rollback tax rate, changed appraisal and tax rate setting deadlines throughout the Tax Code, created special appraisal review board panels, and amended provisions dealing with property tax administration. SB 2 passed out of the Senate Finance Committee after an extended hearing with a substantial show of force against the bill from local officials, particularly law enforcement. The full Senate passed the bill on a vote of 18 to 12 on March 21, after considerable debate and adopting an amendment changing the rollback threshold to 5%.

Chairman Bonnen laid out a substitute for SB 2 at a lengthy and contentious public hearing on May 10—again with an overflow of local officials in opposition (and TTARA in support). The substitute differed from the bill that passed the Senate in three major ways. First, a two-tiered rollback system was crafted: a petition rollback threshold based on an annual inflation rate determined by the Comptroller plus 3% and an election rollback threshold based on the annual inflation rate plus 6%. These progressive rollback rates would apply only to more populous districts levying more than \$10 million annually in property taxes for maintenance and operations. Second, the substitute created a real time tax estimate for property owners based on their final appraised values and the actual tax rates proposed for the year by taxing units—an initiative TTARA provided aid in crafting. Third, local taxing units were required to maintain or have access to Internet websites to provide contact information for local officials, tax rate calculation worksheets, and budget and other financial reports to the public.

Ultimately the committee approved a version of the bill which included the two “transparency” provisions, but omitted the changes to rollback tax rates. The new version of SB 2 was voted out of Committee on May 12 and placed on the House calendar for May 18. Because of an anticipated point of order, the bill was recommitted to committee and never made it back onto the House calen-

dar. Chairman Bonnen attempted to pass the real-time tax notice and appraisal review board provisions by adding them as an amendment to **SB 669**, a bill dealing with procedures and administration of appraisal review boards. That bill passed the House, as amended, on May 21. It was reported to the Senate which named a conference committee; however, the House did not reciprocate. Again, the bill died.

SB 1 by Bettencourt (*Special Session — Property Tax “Reform and Relief”*) was designated by Governor Abbott as his top priority in the special session which tackled a crowded agenda of 20 items. The Senate quickly passed **SB 1**, which included a 4% rollback threshold, automatic ratification elections, a real-time tax notice, and appraisal review board reform. The House passed an amended version of SB 1 with a 6% rollback threshold applying to larger taxing units and other changes. The Senate did not concur with the House amendments and appointed a conference committee. Informal negotiations began between the House and Senate, but a compromise eluded them. The special session ended with no change—relief or reform—in property taxation.

What Lies Ahead

While there was substantial disagreement on a number of property tax issues during the regular and special session, the one thing on which most parties would agree is that there is much to be done. The Governor and Lt. Governor have pledged to continue to push for a lower rollback threshold—an initiative that could even become a campaign issue. While taxing jurisdictions and taxpayers alike supported the real-time tax notice, it failed to pass, and TTARA will be active in advancing it in 2019. A number of chief appraisers remain concerned about the risks associated with the “dark store” theory, and are likely to continue to push for some type of “fix.”

And the greatest property tax evil of all—a real or de facto split tax roll, which would shift more of the tax load away from homeowners onto business—remains an ongoing threat from lawmakers frustrated with the failure of this session’s reform proposals.

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November 30—December 1, 2017 at the JW Marriott Hotel in Austin

Sales Tax

The combined effect of the focus on property tax issues and the tight fiscal situation limited the consideration of state taxes, especially the sales tax. However, for the first time in several sessions, the Comptroller proposed a number of “technical” bills to make desired policy and tax administration changes and clarifications to sales and other taxes. But, as with most other tax-related bills, the story of the session was more of the bills that failed.

Bills that Passed

SB 745 by Kolkhorst (Regular Session — Temporary Employment Service) was a Comptroller bill to clarify when services provided by an employee of a temporary employment service are not taxable consistent with the ruling of the 3rd Court of Appeals in *Allstate Insurance Co. v. Hegar*. The current exclusion from taxation for such services is changed to an exemption which shifts the burden of proof to the taxpayer. To qualify for exemption: (1) services must be the same as those normally performed by regular employees, (2) the host employer must furnish all necessary supplies and equipment which may not be acquired from the temporary employment provider, and (3) the host employer must have the sole right to direct and supervise the work done.

SB 1083 by Perry (Regular Session — Taxable Insurance Services) provides that otherwise taxable insurance services (e.g. claims adjusting) will not be considered taxable if performed by a CPA firm, provided that less than 1% of the firm’s total revenue in the previous calendar year was derived from insurance services provided in Texas.

HB 4038 by Bohac (Regular Session — Qualifying Data Center Jobs) expands the definition of “qualifying job” for purposes of certification as a data center eligible to receive a temporary exemption for purchases of essential tangible personal property. Now included are new employment positions staffed by a third-party employer under a contract with a qualifying owner, qualifying operator, or qualifying occupant, provided the employment position is permanently assigned to an associated qualifying data center.

HB 4054 by Murphy (Regular Session — Bakery Items) provides that defined bakery items sold by a bakery are exempt regardless of whether they are heated (currently

taxable) or not or are sold with or without plates or eating utensils. All you pastry lovers rejoice!

Bills that Failed

HB 2475 by S. Davis (Regular Session — Broadway Productions by Non-profits) was one of two bills vetoed by Governor Abbott. It would have exempted admission charges to touring Broadway productions performed under contract with non-profit or charitable organizations. The Governor’s veto message stated that admissions to such Broadway shows for tax purposes should be treated the same as any other comparable performance.

HB 2182 by Reynolds (Regular Session — County Assistance Districts) was also vetoed and would have allowed county assistance districts (Ch. 387, Loc. Gov. Code) under certain conditions to overlap for purposes of determining compliance with the overall 2% total local sales tax rate cap. To guard against the actual levy of a combined local tax over 2%, the overlapping area would have been limited to road rights-of-way and any area in which a county facility is located but does not contain a business with a sales tax permit. However, the Governor stressed that the 2% cap should remain inviolate and, thus, that even a remote chance otherwise should be avoided.

HB 2562 by Shine (Regular Session — Audio/video Recording Equipment) was a Comptroller bill intended to narrow the exemption for equipment used in producing audio and video recordings to exclude equipment used to make YouTube-type videos. The exemption would have been limited to property used to make “master” recordings from which copies are sold or exhibited. Concerns were raised about how the proposed change would affect the taxability of equipment used by businesses to produce in-house videos for staff training and other purposes. After passing the House, the bill died following a hearing in the Senate Finance Committee.

SB 1539 by Watson (Regular Session — Sales for Resale) was another Comptroller bill that fell by the wayside. It would have made a number of changes to the definition of what constitutes a sale for resale. Two of the proposed changes that proved to be particularly unsettling were: limiting application of the sale for resale provision to only the resale of a taxable good or service rather than the current “with or as a taxable item” and narrowing the

exclusion for certain items used to perform a non-taxed service to those used to perform contracts with certain governmental and non-profit organizations. The bill passed both the House and Senate but died in Conference Committee at session's end.

HB 1370 by Springer (*Regular Session — Local Tax Receipt Reports*) would have repealed the current provisions preventing the Comptroller from disclosing individual tax payments to local taxing jurisdictions and would have required the Comptroller, when requested, to list gross sales, taxable sales and taxable purchases reported on individual sales tax returns — information that has always been deemed confidential. Revealing such detailed taxpayer information is unnecessary to accomplish the intended purpose of providing local governments with the tax collection data needed for fiscal and budgeting purposes.

TTARA strenuously objected, and in response Rep. Springer offered a substitute bill that removed the reporting of gross and taxable sales and purchases. However, it still required the Comptroller to provide the amount of taxes remitted by *individual outlet* to the taxing entity. It also repealed the current provisions preventing the Comptroller from disclosing individual taxpayer payments to local taxing jurisdictions with regard to those doing business in designated areas (including, among others: crime control districts, enterprise zones, reinvestment zones and areas defined for economic forecasting). Such reporting of tax receipts now may only be done on an aggregate area wide basis. The continued objections by TTARA and others that joined the chorus caused Rep. Stringer to pull the bill down when it came up for House floor consideration.

SB 1713 by Uresti (*Regular Session — Collection of Use Tax on Remote Sales*) was one of the most problematic bills filed. It sought to enhance use tax remittances by out-of-state sellers on taxable sales to Texas residents. As filed, in-state “facilitators” of remote sales were required to collect use tax if the out-of-state vendor did not. The bill also established an “economic nexus” test whereby a seller would be presumed to be doing business in Texas if annual receipts from in-state sales exceeded \$500,000 or 1,000 transactions (in direct conflict with the U.S. Supreme Court’s physical presence requirement).

While TTARA supports a level playing field for all retailers, we opposed SB 1713 because of its suspect legality and testified against it before the Senate Finance Commit-

tee. Texas already has a provision extending sales tax collection responsibility to the fullest extent allowed under federal law. SB 1713 went far beyond that. We suggested the Committee instead consider requiring out-of-state sellers to inform buyers of their use tax liability and to report sales and customer information to the Comptroller. Such a scheme adopted in Colorado was validated by the federal courts because it applies to tax reporting rather than tax collection, which cannot be required absent a physical presence.

In response, in a committee substitute, Sen. Uresti deleted the economic nexus test and added a notice and reporting scheme patterned after the Colorado law. However, the substitute bill removed the tax collection responsibilities of some sales facilitators but not those that collected sales receipts on behalf of the out-of-state seller. In addition to continuing to object to the sales facilitator provisions in general, we objected to the substitute’s imposition of tax collection responsibilities on one business model versus another.

Sen. Uresti, by a floor amendment, changed the bill to only require a Comptroller study of the issue but it eventually died in the House Ways and Means Committee.

What Lies Ahead

The sales tax may be the state’s most accepted tax. It is not exactly popular, but it is at least perceived to be relatively fair in its application—with the exception of out-of-state sellers. Lawmakers will still seek ways to extend the reach of the Comptroller’s office, but lacking authority from federal law, the only solution may lie with Congress.

One of the more interesting Ways and Means Committee hearings of the year took place during the special session. The committee studied a variety of “tax swap” bills that would reduce or eliminate some portion of the property tax, particularly that for schools. The lost revenue would be replaced by some type of enhanced sales tax or some alternative revenue source to be named later. The idea resonated with a number of committee members, as well as other legislators, though it is technically and politically challenging at the very least. While the committee may or may not revisit the issue as an interim charge, a number of legislators may research the idea on their own.

Franchise Tax

The mortality rate for franchise tax bills was high. Of the 60 franchise tax bills that were filed, only 5 ultimately became law. Again, the dominating story of the franchise tax was that of the bills that failed, and not the few that passed.

Bills That Passed

HB 4002 by Dennis Bonnen (*Regular Session — Technical Clean Up*) is one of two Comptroller bills that passed. It amends the definition of “production” for the purposes of claiming the “cost of goods sold” deduction to conform to the appellate court ruling in the *Autohaus* case, which overruled a trial court decision in favor of the taxpayer. The new statutory language denies “installation” as a unique activity qualifying as “cost of goods sold;” however, the Comptroller will leave in place their current tax rule that allows “installation occurring during the manufacturing or construction process” as an eligible inclusion with “cost of goods sold.”

HB 2126 by Button (*Regular Session — Prepaid Calling Cards*) is another Comptroller bill that allows the sale of prepaid calling cards by traditional retailers without jeopardizing their ability to claim the half rate for franchise tax purposes.

HB 3992 by Murphy (*Regular Session — New Farmer Cooperative Exemption*) exempts a cooperative that is a single-member farmer’s cooperative with at least 500 members that grow fruit.

SB 550 by Campbell (*Regular Session — Historic Structures Tax Credit*) extends the current franchise tax credit for investments in the rehabilitation of historic structures to the insurance premiums tax.

HB 1003 by Capriglione (*Regular Session — Historic Structures Tax Credit*) extends the historic structure rehabilitation credit to investments made by institutions of higher education.

Bills that Failed

SB 17 by Nelson and HB 28 by Dennis Bonnen (*Regular Session — Franchise Tax Phase-out*) are the most notable among the franchise tax bills that failed, as they would have built upon the franchise tax cuts of 2015. Each bill would have phased out the franchise tax by reducing the various rates of the tax proportionately over time; however, the two bills relied on different sources of revenue to pay for the phase-out. SB 17 would have reserved one-half of any projected future biennial revenue growth in excess of 5%. HB 28 would have used the first \$3.5 billion of any realized general revenue cash balance to phase out the tax. Each bill passed their respective houses only to die without a hearing on the opposite side of the Capitol.

What Lies Ahead

Based on the topics of the franchise tax bills filed, it is clear that repealing the franchise tax remains a priority for a substantial number of Texas lawmakers. To do so, however, comes at substantial cost to the state’s revenue stream. Comptroller Hegar projects the franchise tax will raise well over \$7 billion to finance the 2018-19 Texas budget — roughly 7% of the state’s certification revenues. The state’s fiscal circumstances are expected to be tight for the foreseeable future; consequently the prospect for eliminating the franchise tax, or reducing the various rates of the tax, appears remote.



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Other Taxes/Unclaimed Property

Bills That Passed

Severance Taxes

HB 2277 by Darby (Regular Session — High-Cost Gas Well Taxation) is a Comptroller bill directed at bringing stability and uniformity to the administration of the severance tax rate reduction for high-cost gas wells. It substitutes a refund provision for the current authority to take a credit for overpaid taxes and specifies that any refund will be paid to whomever remitted the tax (which may not necessarily be the producer). Most importantly, March 1 of the year after application becomes the deadline for amendments to drilling and completion costs and as soon thereafter as practicable the Comptroller is directed to irrevocably fix the median cost of a high-cost gas well for purposes of computing the reduced tax rate.

HB 3232 by Darby (Regular Session — Severance Tax Delinquency Penalty) waives the 5% penalty on amended returns that show additional tax due if: the original report is timely filed with full payment of the taxes due, the amended report is filed within 730 days of the original due date, the amount of additional taxes due does not exceed 25% of the total tax due, and all errors identified by the Comptroller are resolved within 60 days.

Motor Fuels Taxes

SB 1120 by Zaffirini (Regular Session — Local Tax Prohibition) is one of two Comptroller bills that addressed the authority to tax and the administration of motor fuels taxes. SB 1120 clarifies that both compressed (CNG) and liquefied natural gas (LNG) are included – along with gasoline, diesel fuel and liquefied gas – in the prohibition of local taxes on the sale of motor fuels.

SB 1557 by Kolkhorst (Regular Session — Export Sales) enhanced the Comptroller's ability to track tax-free sales intended for export but instead sold in-state. The purchaser of such fuel must pay the motor fuels tax that becomes due on the sale and the seller is responsible for its collection and remittance. Significant new reporting requirements are imposed to track a Texas sale of motor

fuel that was purchased tax-free for export. A \$200 per sale penalty is imposed for non-reporting unless an amended report including the subsequent sale is submitted within 180 days of the original report. Failure to report triggers loss of the exemption and an additional penalty of the greater of \$2,000 or five times the tax due.

General Tax Administration

SB 1095 by L. Taylor (Regular Session — Redeterminations and Refunds) is a Comptroller bill that extends the deadline to file a redetermination petition or a hearing request from the current 30 to 60 days beginning 9/1/17. In addition, the date a decision becomes final and the deadline for requesting a rehearing (25 days) is made the same as for a contested case hearing before the State Office of Administrative Hearings.

Bills that Failed

Unclaimed Property

HB 2829 by Oliveira (Regular Session — Unclaimed Property Enforcement) was a Comptroller bill aimed at addressing compliance issues by extending the enforcement powers attendant to state tax administration, including subpoena power, to the administration of unclaimed property. As filed, the enhanced enforcement authority was granted to the Comptroller or his designee. TTARA strenuously objected to giving third-party contractors such authority and the Comptroller agreed to delete that provision. However, Rep. Oliveira, in an attempt to move the bill as quickly as possible, reported it out of committee without the change. The plan was to make the necessary change in a floor amendment, but the bill never got there as it died in the Calendars Committee.

Economic Development

Bills that Passed

No substantial economic development legislation passed this session; however, the governor received a \$317 million 2018-19 appropriation for Economic Development and Tourism, up almost \$20 million from the previous state budget. While \$86 million of this is specifically targeted for the Texas Enterprise Fund (the Governor's "deal closing" fund used to attract new investment to the state), the Governor has great flexibility in using the remainder of the appropriation.

Bills that Failed

SB 600 by Burton (*Regular Session — Chapter 313*) reflected the concerns many legislators have about the use of economic incentive tools. SB 600 would have repealed Chapter 313 of the Tax Code, which allows school districts to offer a temporary limitation on the appraised value of certain new investments. Given that Texas property taxes are among the highest in the nation, particularly for industrial projects, Chapter 313 is the state's single most important economic development tool. The business community made a strong showing against the bill at its committee hearing. Forty-eight witnesses opposed the bill, while three witnesses registered in support. Legislative skepticism of the program stems, in part, from the state's flawed method of estimating its fiscal impact. Though state law requires projects to demonstrate that the limita-

tion is a determining factor in the decision to invest in Texas, the Comptroller's fiscal assessment of the program is based on the assumption that all projects will invest here regardless of the incentive. Because of the interaction of the local school property tax base with state aid payments the Comptroller's analysis shows a fiscal loss to the state as a result of the program. Further projects must demonstrate they will either directly pay or generate more in tax revenue than the amount of benefit they receive from the limitation. A similar repeal bill, **SB 116**, was filed by Senator Kolkhorst in the special session, but it failed to receive a hearing.

What Lies Ahead

In spite of Texas' pro-business reputation, the political far right and far left share great skepticism over the value of the state's economic development toolbox. Chapter 313 is set to expire on December 31, 2022. Repealing it prior to that date will require the legislature to proactively pass legislation; however, the legislature will have to act in the 2021 legislative session for the program to continue. Of greater concern is Chapter 312 of the Tax Code which allows cities and counties to offer tax abatements. Chapter 312 must be reauthorized in the next regular session of the legislature or it will expire on September 1, 2019. Though Chapter 312 abatements have no fiscal impact on the state treasury, the continuation of any economic development program may face rough sledding in the 86th Legislature.

School Finance

The 85th Legislative Session began with high hopes among school districts and charter schools that the Legislature would begin to address school finance funding issues. Chief among those are the ever-increasing reliance on the local property tax to fund the state's school system, resulting in larger recapture payments to the state from property wealthy school districts, and increasingly outdated weights and allotments. Over 160 bills were filed to address these issues, and Speaker Straus made it clear early on that school funding was one of his main priorities. But revenue was scarce, and almost all of the filed bills had very large fiscal notes attached, so very few passed.

Bills That Passed

HB 21 by Huberty (*Special Session — School Finance*) was the House's major school finance bill in both the Regular and Special Sessions. During the Regular Session, the House budget contained \$1.8 billion of additional funding for schools contingent on the passage of a school finance bill. The revenue came from delaying the August 2019 state aid payment to school districts until September, pushing that cost into the next biennium. The House Public Education Committee passed HB 21, a comprehensive school finance bill allocating the added funding by in-

creasing the amount per student received by all school districts, increasing funding for bilingual and low-income students, and reducing recapture. When the bill passed the House on April 19 by a vote of 134-16, the Speaker was the first member to vote: *"Show the Chair voting Aye."*

Those efforts by the House ran headlong into a brick wall in the Senate. Lt. Governor Patrick indicated early in the session that his main priority in education was the passage of a bill implementing education savings accounts and tax credit scholarship programs which would allow parents to use state funds to send their children to private schools. He prioritized that issue at the top of his list by assigning it SB 3 filed by Larry Taylor, the chair of the Senate Education Committee. The bill created programs for both education savings accounts and premium tax credit scholarships, giving parents \$5,400 - \$8,100, depending on the household income, to use to send their children to private schools. The Senate quickly passed the bill after limiting availability of the programs to counties with populations of more than 295,000. The House had previously voted to put a rider in their version of the budget prohibiting the expenditure of state funds to pay for private schools, so the bill languished for approximately two months before being referred to committee late in the session. In the meantime, Senator Taylor substituted the voucher program into HB 21, stripped out most of the funding, and sent it back to the House. Conferees never met and the bill died.

When Governor Abbott called legislators back into a 30-day special session that began on July 18, he added school finance as one of the items in the call. Chairman Huberty once again filed HB 21 to increase funding to school districts by \$1.8 billion by delaying the August 2019 payment to school districts. In a Groundhog Day moment, the Senate stripped out all but **\$563 million** earmarked for very specific expenditures and sent it back to the House. This time around, though, the Senate did not insert the voucher program. Therefore, in the last votes taken by House members before adjourning Sine Die for the Special Session, they reluctantly agreed to concur with the Senate version of HB 21, and its funding counterpart, HB 30 by Zerwas, which transfers \$563 million to the Texas Education Agency and the Teacher Retirement System from appropriations made to the Health and Human Services Commission during the regular session.

HB 21 by Huberty and HB 30 by Zerwas as sent to the Governor contain the following provisions:

- **\$60 million** for facilities in charter schools. Charter schools must have an acceptable rating under the state's accountability system to be entitled to the funding.
- **\$60 million** additional funding for low property wealth school districts that qualify for facilities funding.
- **\$41 million** for the first year of a six-year phase-in to increase the adjustment given to small school districts that encompass less than 300 square miles in area. At the end of the six years, they will receive the same amount of funding as small districts with 300 square miles or more in area.
- **\$150 million** (\$100 million FY2018; \$50 million FY2019) in Financial Hardship Grants for school districts that will lose Additional State Aid for Tax Reduction (ASATR) funding on September 1, 2017. The grant to a school district with a maintenance and operations tax rate of less than \$1.00 will be reduced proportionately. School districts with maintenance and operations expenditures that exceed 120% of the statewide average are not eligible to receive a grant.
- **\$20 million** for a grant program for school districts and charter schools that provide innovative services to students with autism.
- **\$20 million** for a grant program for school districts and charter schools that provide innovative services to students with dyslexia.
- **\$212 million** for TRS Care – the retired teachers health care plan – to be used to decrease premiums and deductibles and costs for enrolled adult children with mental disabilities.
- Creates a **13-member "Texas Commission on Public School Finance"** to develop and make recommendations for improvements to the current public school finance system. The Commission's report is due on December 31, 2018. The Commission will be composed of:
 - **4 Governor appointees** – one at large, one current or retired classroom teacher with at least 10 years of experience, one member of the business community, and one member of the civic community
 - **4 Lt. Governor appointees** – three Senators and one school administrator or school board member
 - **4 Speaker appointees** – three House members and one school administrator or school board member
 - **1 State Board of Education member**, appointed by the SBOE chair

SB 22 by Larry Taylor (*Regular Session — P-Tech Program*) establishes the Pathways in Technology Early High School (P-Tech) Program to provide for a course of study that enables a participating student in grade levels 9 through 12 to combine high school courses and postsecondary courses so that the student can graduate with both a high school degree and an associate's degree in six years. This program replaces the tech-prep program.

HB 3593 by Bernal (*Regular Session — Cybersecurity Courses*) directs the State Board of Education to approve courses in cybersecurity for credit towards high school graduation. A district may also offer a course in cybersecurity that is approved by the board of trustees for credit without obtaining State Board of Education approval if the district partners with a public or private institution of higher education that offers an undergraduate degree program in cybersecurity to develop and provide the course. The bill creates a Cybersecurity pathway to the science, technology, engineering, and mathematics (STEM) endorsement and adds cybersecurity and computer coding to the courses that satisfy requirements for STEM. It also authorizes two credits in computer coding, as well as computer programming languages, to be used as a substitute for the two required credits in a language other than English.

Bills That Failed

SB 3 by Larry Taylor (*Regular Session — Education Savings Accounts and Tax Credit Scholarships*) would have established Education Savings Accounts that parents can use to pay for private school tuition, tutoring services, and other education expenses. It would have established a State Premium Tax Scholarship Program that would allow a taxable entity to make a contribution to an “educational assistance organization” to be used to pay educational expenses for eligible students to attend a public or private school, and claim a credit against the entity's state premium tax liability. Both programs would only be available in school districts that are located in whole or in part in counties with a population of 285,000 or greater according to the 2010 Census. The bill had a \$25 million limit for the premium tax credit each year.

SB 2 by Larry Taylor (*Special Session — Tax Credit Scholarships/Facilities/Hardship Grants*) would have provided \$60 million each to charter schools and school districts for facilities; and \$100 million in 2017-18 and \$50 million in 2018-19 for hardship grants to school districts that lose revenue due to the expiration of ASATR or the repeal of the Chapter 41 hold harmless. It established a program that allows a taxable entity to make a contribution to an “educational assistance organization” to be used to pay educational expenses for special education or disabled students to attend a public or private school, and claim a credit against the entity's state premium tax liability. The credit could not exceed 50% of the entity's tax liability. The maximum scholarship amount was the lesser of \$10,000 or the amount of the actual tuition. Public school students with disabilities would have qualified for a \$500 payment to assist with expenses. The bill was limited to \$75 million each fiscal year.

SB 1407 by Van Taylor (*Regular Session — Percentage of Taxes Recaptured*) would have required tax bills to list the percentage of M&O taxes that are recaptured in property wealthy school districts. In other districts, tax bills would have listed the percentage of revenue received from property taxes and state aid.

HB 486 by Van Deaver (*Regular Session*) and HB 168 by Van Deaver (*Special Session — Rollback Rate*) would have authorized a school district to lower its M&O rate and increase it back to the higher rate within a 10-year period without holding a tax ratification election.

What Lies Ahead

The interim will be filled with meetings of the new Texas Commission on Public School Finance as they attempt to re-vamp the public school finance system. Newspapers will undoubtedly be filled with headlines of discussions of various new revenue sources to replace the school property tax and numerous proposed changes to the school finance formulas. Editorial boards will publish their opinions of good and bad options, and school groups will choose sides, making consensus on these issues very difficult to attain, as previous commissions have found.

Mark your calendars for the TTARA Annual Meeting!

November 30—December 1, 2017 at the JW Marriott Hotel in Austin



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