

A RECAP OF THE 85TH TEXAS LEGISLATURE'S SPECIAL SESSION

BY ROYCE POINSETT



Readers will recall that the 85th regular session of the Texas Legislature concluded in June with Republican leaders clashing publicly. Lt. Gov. Dan Patrick, legislative leader of the “movement Republicans,” had successfully pushed an ambitious, populist conservative agenda through the Texas Senate. House Speaker Joe Straus, leader of the “moderate Republicans,” had led the House in defeating several of the Senate’s most controversial proposals, heeding calls from many local officials and business leaders.

Once it became clear that several of Patrick’s priorities (particularly the Senate’s versions of local property tax reform and bathroom legislation) were going to die in the House, he scuttled a few “must-pass” sunset bills, including one reauthorizing the state agency that licenses and regulates Texas doctors. Patrick’s stated goal was to force Republican Gov. Greg Abbott to call a special legislative session, which he hoped would include continued work on the Senate’s agenda items.

Abbott complied, and more. The governor called a 30-day special session for work on sunset, property tax reform, and bathroom bills, as well as 17 other agenda items designed to please Patrick and the conservative base.

In many ways the special session was a replay of the regular session. Patrick and the Senate quickly passed most of the governor’s proposals out of the upper chamber, cheered on

by Abbott and grassroots conservatives. Straus and the House proceeded much more deliberately: agreeing to some of the proposals, narrowing others, and outright killing several.

ENACTED LEGISLATION OF THE SPECIAL SESSION

When the special session concluded on August 15, the Legislature had enacted bills substantially accomplishing 10 of the governor’s 20 agenda items:

Sunset legislation. SB 20 and SB 60 successfully extended the life of several important state agencies, resolving the issue that forced the special session.

Annexation reform. SB 6 requires cities seeking to annex an area to first obtain approval from a majority of residents in that area.

Mail-in ballot fraud. SB 5 increases criminal penalties in the hope of combating mail-in voter fraud, particularly fraud involving elderly voters.

Abortion insurance. HB 214 makes Texas one of eight states to bar private insurance companies from including abortion procedures in base coverage; Texas women will have to buy supplemental policies to cover abortions performed outside of medical emergencies.

Abortion reporting. HB 13 requires health care providers to report more details about abortion complications. HB 215 requires doctors to report more details on whether minors

receiving abortions did so as a result of parental consent or a judicial bypass.

End of life. SB 11 requires explicit patient approval before doctors can act on do-not-resuscitate orders, creates a criminal penalty for doctors who willfully violate a patient's do-not-resuscitate wishes, and creates an exception to that penalty for doctors who err "in good faith."

Local tree ordinances. HB 7 restricts the ability of municipalities to prevent landowners from removing trees on their private property. The bill allows landowners to remove trees and to offset any local fees or penalties by planting new trees in their place.

Maternal mortality. SB 17 extends the life of the state's Task Force on Maternal Mortality and Morbidity, providing it more time to study the rapidly rising death rate among Texas mothers.

Teacher retirement benefits. HB 21 injects \$212 million in new money into the Teacher Retirement System of Texas to offset rising health insurance premiums and health care costs. However, neither chamber passed Abbott's proposal to increase teacher salaries by an average of \$1,000 out of existing funding; legislators may have been swayed by the many school leaders who opposed the measure as an "unfunded mandate."

School finance reform. The House pushed an ambitious school finance reform package that would have injected \$1.8 billion in new state funding into the Texas school finance system, and then reluctantly agreed to the Senate's much more limited proposal. HB 21 puts \$351 million in new money into public schools and creates a new commission to study and recommend more comprehensive reforms for the 2019 session.

UNPASSED LEGISLATION OF THE SPECIAL SESSION

The Legislature failed to pass legislation addressing 10 of the governor's 20 agenda items:

Property tax reform. The Legislature failed to deliver on the top priority of the governor and lieutenant governor. The Senate's proposal would have required property tax rate elections before a local entity could raise tax revenues more than 4 percent over the prior year. The House countered with a proposal setting a more lenient 6 percent trigger rate, and the two chambers failed to reach a compromise before the special session ended. House leaders continue to maintain that more comprehensive school finance reform (and increased state education spending) is a prerequisite to meaningful property tax reform that will actually lower local taxes.

Bathroom legislation. The Senate once again passed legislation barring individuals from using restrooms that do not match their biological sex, but no related legislation ever made it to the floor for a vote in the House.

State government spending cap. The Senate passed legislation to further restrict the permitted annual growth in state spending, proposing a new, lower cap based on the estimated combined growth in the state's population and inflation. However, the proposal died in the House.

Local government spending cap. Neither chamber passed legislation to create a cap on the annual growth in spending by local governments.

Local government permitting. The Senate passed legislation seeking to speed local government permitting, by imposing a new statewide uniform process and timeline for certain local permit applications, but the measure did not pass the House.

Local government regulations. Neither chamber passed legislation to restrict local governments from enforcing new local regulations against a landowner who acquired a property before the regulation was enacted.

Texting ban preemption. The Legislature did pass a statewide texting-while-driving ban during the regular session (HB 62). But neither chamber heeded the governor's call to pass further legislation during the special session to pre-empt any existing local ordinances. The stricter existing ordinances that exist in more than 40 Texas cities will remain in effect.

Union dues deduction. The Senate passed a bill to prevent governmental entities from collecting membership dues from the paychecks of government employees who are members of labor unions, but the bill did not receive a vote in the House.

Abortion funding. The Senate passed legislation to broaden the existing state and federal bans on abortion funding by prohibiting Texas governmental entities from entering into any contractual relationships with clinics affiliated with abortion providers. The measure did not succeed in the House.

"Private school choice" for disabled students. The Senate passed legislation to subsidize private school tuition for students with disabilities, but the measure never emerged from the House.

LOOKING FORWARD

The special session ended with Abbott and Patrick openly blaming Speaker Straus for the failure of several agenda items. Abbott left open the possibility that he might call yet another special session at some point, particularly on the issue of property tax reform.

The governor and lieutenant governor have also strongly suggested that they plan to get involved in the upcoming spring 2018 House Republican primary races. Presumably, they hope to influence the speaker's legislative priorities by moving the House's Republican membership in a more conservative direction. Some business groups, on the other hand, have applauded the legislative defiance of Straus and the House and have pledged to defend incumbent Republicans against more conservative primary challenges.

The results of this upcoming GOP electoral battle will determine whether one of the Republican camps gains the upper hand going into the next regular session of the Legislature, which begins in January 2019. The unresolved issues of school finance and property tax reform, state versus local control, and bathrooms are certain to return. **TBJ**



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