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Overview of the 83rd Session

BY ROYCE POINSETT

THE CURRENT ERA OF AMERICAN POLITICS IS OFTEN LAMENTED AS EXCESSIVELY PARTISAN, IDEOLOGICAL, AND RANCOROUS. And Texas politics has often held its own in those regards. But to many observers, the recently completed 2013 Texas legislative session stands as a welcome—and surprising—exception

to modern political dysfunction. These observers have struggled to describe the session, using long-idled terms such as civil, collaborative, workmanlike, and even—gasp—bipartisan. For the most part, the 2013 Texas Legislature avoided ideological and partisan warfare and focused on constructively addressing major policy challenges facing the state.

Two main factors contributed to this relative congeniality and productivity. First, many legislators arrived in Austin with a diminished appetite for conflict. They were still exhausted from the painful 2011 legislative session, which was driven by partisan battles over budget cuts, redistricting, and immigration. During their election campaigns they heard many voters complaining about the partisan warfare and dysfunction in Washington, D.C., and as a result, in 2013 legislators filed and pushed far fewer bills on controversial partisan topics, and many such bills stalled early in the committee process. For example, the divisive issues of redistricting and abortion were largely avoided during the regular session, mercifully postponed to be fought out in summer special sessions once the Legislature's main business had been completed.

Second, the Legislature was blessed with a rosy state budget situation, far rosier than in the brutal 2011 session when the Legislature bridged a historic \$27 billion shortfall with substantial cuts to education and social services. This session, a recovering economy gave legislators billions more in sales tax revenue to work with, and surging oil and gas production taxes deposited more than \$11 billion more into the state's Economic Stabilization Fund (also known as the Rainy Day Fund). Flush coffers always improve a legislature's general mood—it is more pleasant debating where to invest than where to cut—and this session they also provided legislators with sufficient resources to finally address high-dollar infrastructure needs.

Thus the 2013 Legislature was able to focus attention and dollars on three significant, and largely nonpartisan, policy issues: restoring last session's public education cuts, investing in new water infrastructure, and increasing funding for transportation infrastructure. And as discussed below, the Legislature was fairly successful on all three of these fronts.

Looking forward, the November 2014 elections will bring the largest turnover in Texas political leadership in more than a decade. With Gov. Rick Perry departing after a record-setting 15 years in office and Comptroller Susan Combs announcing her retirement after six years in office, a huge dam of political ambition will finally burst. Several incumbent Republican officials will finally see an opportunity to move up, opening seats and leading to an active (and expensive) 2014 campaign season, in which Texas Democrats will attempt to win their first statewide office since 1994. So the 2015 Texas Legislature will see a new governor and fresh faces in key positions, leading to new dynamics and policy priorities.

MAJOR LEGISLATION OF THE 2013 SESSION

The 2013 Texas Legislature enacted 1,521 bills, touching on practically every conceivable facet of modern life

and commerce. Within this bounty of new laws are several that deserve particular attention from the general legal community.

The State Budget

Legislators took advantage of plentiful revenues to undo a good portion of the 2011 budget cuts in public education and social services. Senate Bill 1 enacts a two-year balanced budget with just under \$200 billion in overall spending. This total includes \$94.9 billion in state-level spending (i.e., spending from non-federal funds), an increase of 8.6 percent from the prior budget.

In balancing the budget, legislators used only \$1.75 billion of the \$11.8 billion sitting in the Rainy Day Fund. As discussed below, voters will have the opportunity in November 2013 to approve an additional \$2 billion expenditure from the fund for water infrastructure projects. Conservatives blocked efforts to spend more from the fund, arguing that it should be held in reserve for rainier days.

Public Education

The new state budget provided a way to tackle the Legislature's first priority by increasing funding for public education by \$3.8 billion and thereby restoring a substantial portion of the 2011 cuts. This increased funding has improved the state's position in pending litigation over the constitutionality of the state's school finance system. The trial court will consider the Legislature's actions before it issues its final ruling on school finance adequacy and equity, and an appeal of that ruling is expected to go to the Supreme Court of Texas. A final court ruling could force further legislative action in the 2015 session, or before.

In House Bill 5, the Legislature enacted a number of substantive public education reforms, including reducing the number of required end-of-course exams from 15 to five, providing that the tests will not comprise any part of a student's final course grade, and making coursework requirements more flexible so that students who do not plan to attend college may take more career and technology courses.

Water Infrastructure Funding

The Legislature also accomplished its second priority, as the severe and longstanding Texas drought finally compelled legislators to address the state's future water needs. Together, H.B. 4, H.B. 1025, and Senate Joint Resolution 1 direct \$2 billion from the Rainy Day Fund toward the long-neglected State Water Plan. The money will capitalize a new state water loan fund to help spark investment by local authorities in new pipelines, reser-

voirs, and other water infrastructure.

However, Texans should not expect this \$2 billion investment to magically alleviate the state's water woes. First, conservative Texas voters must approve the funding in a November 2013 election. Second, the state's total long-term water funding needs are estimated at more than \$50 billion over the next several decades, so this initial \$2 billion is merely a down payment. Third, money can't buy you rain.

Transportation Infrastructure Funding

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to coincide with the November 2013 vote on water funding), and even then, the plan is expected to increase road funding by only \$1.2 billion each year, a mere fraction of what is needed. Like water infrastructure, transportation infrastructure is a large and expensive challenge that will confront Texas legislators for years to come.

Franchise Tax Cuts

In response to continued complaints from small-business owners, H.B. 500 provides a moderate reduction in the state's general business tax (known as the franchise tax or margin tax) for all businesses for two years, makes permanent the existing temporary exemption for compa-

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During the regular session, conservatives helped defeat several funding proposals involving new taxes, fees, or public debt. But after three exhausting special sessions, the Legislature did finally construct a complicated compromise with the passage of H.B. 1 and Senate Joint Resolution 1 (third called special session), under which half of the oil and gas production tax revenues normally directed to replenish the Rainy Day Fund will instead be diverted to the state highway fund. However, the same caveats applying to the new water funding legislation apply here: Texas voters still have to approve the plan in a November 2014 election (delayed specifically so as not

nies with less than \$1 million in gross revenues, and creates a new minimum deduction of \$1 million. All together, the bill could save Texas small businesses more than \$700 million during the 2014-2015 biennium.

Health Care Reform

Texas continues to resist increased participation in the Patient Protection and Affordable Care Act and other federal health care initiatives. This session the Legislature rejected proposals to increase the state's spending on Medicaid by \$19 billion over the next 10 years, even though that expansion of Medicaid would have brought Texas an additional \$100 billion in matching federal funds. Conservatives argue that the current and future strings attached to the federal funding would cost the state billions more over time.

Abortion

Anti-abortion conservatives failed to pass their omnibus abortion bill during the regular session, and in the first summer special session a dramatic and high-profile Democratic filibuster killed it again. But in the second special

session Republicans passed S.B. 1 (second called special session), which prohibits most abortions after 20 weeks and requires abortion clinics to meet heightened medical standards.

UNFINISHED WORK FOR 2015

Common Carrier

The 2011 Texas Supreme Court ruling in *Texas Rice Land Partners Ltd. v. Denbury Green Pipeline-Texas LLC* created legal uncertainty and vulnerability for pipeline operators who claim “common carrier” status and use eminent domain to acquire rights of way. Landowners are increasingly using the ruling to challenge eminent domain authority in local courthouses. The oil and gas industry pushed H.B. 2748 in an attempt to shift proceedings back to the Texas Railroad Commission, but the bill was blocked by landowner and property rights groups (and their lawyers). This issue will certainly be revisited in 2015.

Franchise Tax Reform

The Texas franchise tax, or margin tax, is a very unpopular tax system. (But aren’t they all?) The 2013 Legislature did not seriously deliberate comprehensive tax reform. However, the Legislature may be forced to consider reform in 2015, or even earlier, if the Texas Supreme Court mandates major school finance changes. Court-mandated reform of the school finance system historically triggers corresponding reform of the state’s tax system. For example, the court’s last school finance ruling in 2005 led directly to the Legislature’s enactment of the margin tax in 2006.

NEW LAWS THAT AFFECT THE REAL WORLD

Around water coolers and dinner tables, civilians most often query us lawyers about the new laws impacting their everyday lives, especially those that are puzzling or just plain weird. So that we can opine quasi-knowingly, here is a short sampling of “real world” laws.

Hang Up and Drive! Sometimes.

Bills to universally ban cellphone use while driving were once again defeated, but under H.B. 347 the current ban within a school zone has been extended to include all school property, including carpool lanes and parking lots. On the other hand, thanks to S.B. 1074, when drivers are pulled over, they can now show their proof of insurance electronically, on that same offending smartphone.

Guns on Campus

Gun rights conservatives did not pass their highest priority bill, authorizing concealed handgun license holders

to carry their handguns on public college campuses. But under S.B. 1907 license holders are now permitted to store their firearms in their locked cars when they park on campus, notwithstanding a university’s wish to ban weapons outright.

Back to the Beach

S.B. 329 prohibits Texans under 18 from using a tanning bed, even with parental permission.

Festus Not Expressly Covered

Students, teachers, and staff members at Texas public schools are now expressly authorized by H.B. 308 to display “symbols associated with traditional holiday celebrations” and to use “traditional holiday greetings” like “Merry Christmas” and “Happy Hanukkah.”

Follow That Absolut Ad

Alcohol advertisements may now be displayed on public transportation vehicles such as buses, taxis, limos, pedicabs, and rickshaws, thanks to H.B. 1917.

Pop a Top

Brewpubs and craft beer brewers have expanded ability to sell their suds directly to customers, distributors, and retailers under Senate Bills 515, 516, 517, and 518.

Eyes in the Sky

H.B. 912 prohibits Texans from flying their unmanned aerial drones over other Texans’ private property to video or photograph them.

Stay Gold, Ponyboy

H.B. 1862 makes switchblades legal in Texas for the first time since 1959.



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