

# **A Recap of the 85<sup>th</sup> Texas Legislature**

**June 5, 2017**

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July 18, 2017

## **INTRODUCTION**

Every two years, state lawmakers flock to the Texas State Capitol in Austin to serve the people who elected them, passing legislation and debating issues intended to move the state — and its citizens — forward.

But 140 days is all the Texas Legislature gets, and if lawmakers don't finish certain work by the time the legislative clock runs out, the governor is the only official who can call them back for more.

The 85<sup>th</sup> Texas Legislature was exhausting and polarizing for everyone involved, with a renewed focus on social issues. Fights over the state's new immigration law and a proposed "bathroom bill" erupted in both chambers, leaving some lawmakers deflated at the end of the 140 days. The Legislature approved a 2018-19 budget — the only item constitutionally required to pass — among other things, but left other items untouched.

Two of the state's top three ringleaders — Lt. Gov. Dan Patrick and House Speaker Joe Straus, the heads of the Senate and House — clashed near the end, increasing the divide in the already politically heated climate.

Gov. Greg Abbott spent much of the session on the sidelines, weighing in only when necessary and asserting his power at the end. Abbott and Patrick served their second sessions in their respective roles; Straus was unanimously elected by House members to serve his fifth term as speaker.

As usual, a series of highs and lows constituted the 140 days inside the Capitol, but the possibility of a special session looms in the distance as Abbott decides whether to call the Legislature back to finish the business he wants them to pass.

Despite the uncertainty, one thing still holds true: In a state where people claim everything around them is bigger and better, look no further than the Texas Legislature — the most fascinating, five month-long political show on earth.

## **THE TALE OF THREE AGENDAS**

As session kicked off in January, Gov. Abbott gave his State of the State address to both chambers, naming four emergency items in the process — banning “sanctuary cities,” overhauling the state’s broken welfare system, passing ethics reform and approving a resolution that calls for a convention of states to amend the U.S. Constitution.

The Legislature passed all four — in one form or another, completely or partially — and Abbott later added Senate Bill 5, a measure to overhaul the state’s voter identification law, to his list of emergency items, which the Legislature passed, too.

Lt. Gov. Patrick, leader of the Senate, introduced the most bold and ambitious agenda of the state’s top three. He designated Senate Bills 1-20 as his legislative priorities for the session, including everything from banning inappropriate teacher-student relationships to providing bulletproof vests for the state’s law enforcement.

On the opposite side of the Capitol rotunda sat Speaker Straus, heading the House and defending his chamber’s position on key issues. While the House took different stances than the Senate on a handful of bills, such as the “bathroom bill,” they agreed with the upper chamber on others, such as the “sanctuary cities” bill.”

Tensions boiled and each chamber stalled or killed the other chamber’s prized bills as session progressed, with the House and Senate both using the legislative process — a system devised to kill bills rather than pass them — to their advantage. The House stalled Patrick’s version of the “bathroom bill,” and in return, Patrick didn’t let the “sunset safety net bill” come to the floor of the Senate for a vote.

By the last day of the regular session on May 29, the Legislature had sent 1,211 bills to Abbott’s desk, the lowest number of bills sent to the governor in more than two decades.

## **THE MAIN STAGE**

### **The Budget**

After months of closed-door meetings, both chambers — led by chief budget writers state Sen. Jane Nelson, R-Flower Mound, in the Senate and state Rep. John Zerwas, R-Richmond, in the House — approved a compromised 2018-19 budget the weekend before the regular session ended.

The \$217 billion dollar document includes around \$800 million to maintain border security and cuts state funding for schools by about \$1.1 billion. Lawmakers also directed around \$500 million to the state's child welfare system. And after the Legislature cut \$350 million to therapy providers paid by Medicaid last session in 2015, they agreed to restore around 25 percent of Medicaid payments to therapy providers in 2018 and 2019.

The compromised budget also dipped into the Rainy Day Fund — the state's savings account — to use during the tight-fisted legislative session. The money will pay for priorities such as repairing government buildings and protective vests for law enforcement.

Comptroller Glenn Hegar certified the budget on June 1, sending it to Abbott for the final seal of approval.

### **Property Tax Reform**

The Legislature ultimately didn't pass a version of property tax legislation — an item Lt. Gov. Patrick dubbed must-pass legislation to prevent a special session.

The Senate wanted Senate Bill 2 by state Sen. Paul Bettencourt, R-Houston, their main property tax proposal this year, to pass, which would have required cities and counties to hold automatic "rollback elections" if an entity decided to increase its property tax collections by 5 percent.

But the House stripped that provision from SB 2 and instead attached a similar amendment to Senate Bill 669 — a property tax appraisal bill — that contained parts of SB 2 but excluded the rollback election section. The House instead left the threshold at 8 percent — its current rate — and said it would be left up to the will of constituents to hold an election.

Both chambers were at odds over how to best reform the system. The upper chamber said SB 2 was needed to provide people relief from property taxes on the rise, adding rollback elections would hold local government accountable. But the lower chamber

likened SB 2 to an unnecessary measure that could threaten a county or city's ability to hire local law enforcement, build new infrastructure and fix roads.

Both SB 2 and SB 669 died, effectively killing the chance at achieving meaningful property tax reform during the regular 85<sup>th</sup> legislative session. Patrick and Bettencourt asked Gov. Abbott to include property taxes in his call for a special session should he decide to have one.

### **Immigration (“Sanctuary”) Legislation**

One of the most emotionally charged issues this session revolved around a bill banning “sanctuary cities” in the state.

Senate Bill 4 by state Sen. Charles Perry, R-Lubbock — a measure that saw hours of testimony and lengthy floor debate in both chambers — will require local law enforcement to comply with federal immigration authorities and allow police to question detained people about their immigration status.

The lower chamber watered down SB 4 after the Senate approved it, but a pivotal moment on the House floor returned the legislation closer to the version the upper chamber passed when state Rep. Matt Schaefer, R-Tyler, successfully tacked on an amendment to the bill allowing law enforcement to question detained people about their immigration status.

Democrats worry SB 4 will trigger fear and liken the bill to “show me your papers” type legislation. If law enforcement doesn't cooperate with immigration authorities, they can face a Class A misdemeanor and possible jail time or civil penalties.

Some cities and counties are already challenging SB 4 in federal court. The city of El Cenizo and El Paso County filed lawsuits to block the legislation in May, and on June 1, the cities of San Antonio and Austin announced they were joining the fight against the bill.

Gov. Abbott signed SB 4 on May 7, and the law is set to go into effect Sept. 1.

### **The “Bathroom Bill”**

The Legislature didn't pass a version of the “bathroom bill” during the regular session, which would have regulated transgender Texan's use of restrooms. The item was one of Lt. Gov. Patrick's two must-pass pieces of legislation this year, he told lawmakers, to avoid a special session.

The “bathroom bill” issue was center stage most of session — hours of testimony ensued for several hours in House and Senate committees, and numerous rallies and protests happened at the Capitol against the proposal.

Senate Bill 6 by state Sen. Lois Kolkhorst, R-Brenham, the most controversial and best known “bathroom bill,” was the upper chamber’s original bill. It would have required transgender people in the state to use restrooms in public buildings that match their “biological sex.” SB 6 would have also preempted local nondiscrimination ordinances.

Patrick and conservatives said the bill was needed to protect women and children’s safety, while those opposed said SB 6 was discriminatory and would harm families.

SB 6 and a similar bill by state Rep. Ron Simmons, R-Carrollton, both died in the House, but the issue stayed alive. A few weeks later, and amid threats by Patrick to go to a special session over the “bathroom bill,” the House put a bathroom amendment that would have only affected restrooms in public elementary and secondary schools on another senate bill.

The Senate and Patrick rejected the House’s compromise, saying it did very little.

## **CPS Reform**

Leading up to the legislative session, a judge ruled the child welfare system in Texas violated children’s rights, and headlines from children spending nights in the state’s CPS offices to the death of a fleeing foster child hit the public.

With the issue under a brighter spotlight than before, Gov. Abbott listed reforming the state’s child welfare system an emergency item. The Legislature obliged, sending four bills — House Bill 4, House Bill 5, House Bill 7 and Senate Bill 11 — to his desk.

HB 4 by state Rep. Cindy Burkett, R-Sunnyvale, will give around \$350 per month to families who take in abused and neglected children related to them. HB 5 by state Rep. James Frank, R-Wichita Falls, makes the Department of Child Protective Services its own agency, taking it out of the Texas Health and Human Services Commission’s discretion.

HB 7 by state Rep. Gene Wu, D-Houston, alters the way courts work with the system, and SB 11 by state Sen. Charles Schwertner, R-Georgetown, directs DPS to establish a “community-based care” model, granting contracted organizations the authority to monitor children in foster care, adoptive and relative’s homes.

Abbott signed all four pieces of legislation May 31.

## **Ethics Reform**

Gov. Abbott named ethics reform an emergency item last session in 2015, and after it failed in the final moments, he named it one again this session. Out of the six measures he marked a priority, three made it to his desk.

Both chambers passed Senate Bill 500 by state Rep. Van Taylor, R-Plano, House Bill 501 by state Rep. Giovanni Capriglione, R-Southlake, and House Bill 505 by state Rep. Charlie Geren, R-Fort Worth.

SB 500 strips government pensions from officials who commit acts of public corruption. HB 501 requires lawmakers and officials to disclose business ties with government entities. HB 505 restricts retiring legislators from using campaign accounts to prop themselves up as lobbyists once they leave office.

But Abbott's other three ethics-related priorities — all focused on lobbyists — failed passing out of one chamber or the other, including one that would have banned retiring lawmakers from becoming lobbyists for two years and another that would have expanded lobbyist reporting requirements.

## **School Finance and Accountability**

After the Texas Supreme Court ruled in 2016 that the state's school funding system was constitutional but had room for improvement, some lawmakers this session tried to overhaul the system.

House Bill 21 would have increased funding for most of the public schools in the state while simplifying some of the formulas used to allocate money to school districts in Texas. After the House approved the bill, originally allocating \$1.5 billion for the school finance system, the Senate lowered funding to \$530 million and added a "private school choice" amendment — a provision subsidizing private school tuition and homeschooling for disabled kids — to HB 21.

Compromises on HB 21 ultimately failed, with state Rep. Dan Huberty, R-Houston, and state Sen. Larry Taylor, R-Friendswood — the heads of education in the House and Senate — declaring the legislation dead in May.

On the other hand, the Legislature passed House Bill 22 — the school accountability bill — the weekend before the regular session ended. Under HB 22, public school districts will be graded on an A-F rating based on three arenas: student success, student progress and eliminating the gaps. School districts will receive their first grades in August 2018, and individual schools will receive grades in August 2019.

## **OTHER ISSUES**

### **Ride Sharing**

On May 29, Gov. Abbott signed House Bill 100 by state Rep. Chris Paddie, R-Marshall, into law, establishing statewide ride-hailing regulations and overruling local ordinances that spurred groups such as Uber and Lyft to leave certain cities in the state.

Uber and Lyft announced they were resuming business in Austin shortly after Abbott signed HB 100. Both groups left Austin last year after the city council passed an ordinance requiring ride-hailing companies to perform fingerprint background checks on drivers — a move, the companies said, that was burdensome to its business.

Under HB 100, ride-sharing companies must obtain a permit from the Texas Department of Licensing and Regulation and pay an annual \$5,000 fee to operate throughout the state. Additionally, drivers must go through annual local, state and national criminal background checks, but won't be required to be fingerprinted.

The bill contains a provision defining “sex” as “the physical condition of being male or female” — an item that introduced a fair amount of debate, especially amid a legislative session that focused largely on bathroom regulations, gender identity and biological sex.

Since HB 100 had more than two-thirds support from members in both the House and Senate, it went into effect immediately upon the governor signing it.

### **Therapy Rates for Pediatric Home Therapy**

After lawmakers last session slashed \$350 million to the amount Medicaid paid therapy providers serving disabled children, both chambers agreed this year to restore 25 percent of Medicaid payments to them in 2018 and 2019.

The move came as a victory for the Senate and a loss for the House, where certain leaders — including Speaker Straus — previously said they intended to reverse cuts to therapy funding through a supplemental budget, or state money directed to current funding needs leftover from the prior session.

After lawmakers ordered the therapy cuts in 2015, therapy providers and families of disabled children receiving services from speech, physical and occupational therapists moved to block the cuts in court, saying a lack of funding could create a lack of health care access for disabled children. Their efforts failed, but the legal process halted the cuts from happening for more than a year.

Families of disabled children across the state will continue to make their case to decision makers as they struggle to find access to needed services.

### **Union Dues Deduction**

An attempt to end the state's role in collecting public employee membership dues for certain labor unions and associations died at the Capitol for a second time this year.

Senate Bill 13 would have only applied to government employees such as teachers, corrections officers and child protective service workers, while exempting law enforcement and charitable organizations.

State Sen. Joan Huffman, R-Houston, authored the bill — one of Lt. Gov. Patrick's legislative priorities — in the Senate, which approved it along a party line vote. But SB 13, nor its House counterpart House Bill 510 by state Rep. Sarah Davis, R-Houston, ever received a committee hearing in the House, thus killing the issue again this year.

The battle lines were partisan — Republicans argued the legislation was necessary because it was improper for the state to be involved in the dues collecting process in the first place. Democrats argued the bill was discriminatory and aimed to pick winners and losers, adding it would deliver a blow to union and association membership in the state.

### **Mental Health Reform**

Addressing mental health in Texas was a top priority for the House this year, Speaker Straus said prior to the start of session, and the Legislature aimed to reform the process in which the state provides access and cares for mental health patients.

Before session began, a select committee on mental health released a report that warned if the state didn't overhaul the mental health system, there may be consequences down the road. The Legislature passed two bills, House Bill 10 and House Bill 13 by state Rep. Four Price, R-Amarillo, that are now on Gov. Abbott's desk.

HB 10 will require the Texas Department of Insurance to regulate mental health parity, preventing health insurance companies from offering differences in coverage and benefits between physical and mental health. The bill, Price said, aimed to improve access to behavioral health services. HB 10 will also direct an ombudsman to help consumers in Texas access mental health services, tracking and reporting how well insurance companies provide access to mental health services.

HB 13 will direct the Texas Health and Human Services Commission to establish a grant program for groups that provide mental health services in areas across the state.

## **Sunset Safety Bill**

All state agencies must undergo “sunset reviews,” or periodic checks by the Legislature, to avoid being forced to shut down. But a bill to prevent routine agencies from shuttering — known as the “sunset safety bill” — failed to pass the Legislature during the regular session.

It began with the conservative Texas House Freedom Caucus delaying the lower chamber’s agenda on the night of a key midnight deadline, running out the clock on a standalone sunset safety net bill in the chamber.

It was then up to the Senate to act on its own sunset legislation, which it never did. Lt. Gov. Patrick maintained his promise, saying he wouldn’t bring the bill up for a vote on the Senate floor if the House didn’t act on a “bathroom bill” or property tax reform.

In 2009, the Legislature failed to pass a similar sunset safety net bill to keep agencies such as the Racing Commission and Department of Transportation from shuttering during its regular session. Then Gov. Rick Perry called a special session soon afterward.

Gov. Abbott said on May 29 that a sunset safety bill should have been easy for the Legislature to pass, adding it was his biggest disappointment lawmakers didn’t do so. The failure of a sunset bill keeps the door open for a possible special session.

## **The “Buffett Bill” and Tesla**

In April, billionaire Warren Buffett met with Lt. Gov. Patrick and allegedly Gov. Abbott behind closed doors.

The next day, the “Buffett Bill,” or Senate Bill 2279 by state Sen. Kelly Hancock, R-North Richland Hills, was born, carving out Buffett’s Berkshire Hathaway Automotive — a car company — from current state law that prohibits vehicle manufacturers from also dealing cars.

The legislation seemed on the fast track for Senate approval, but conservative activists and grassroots leaders quickly pushed back against SB 2279, blasting Republicans for giving special treatment to Buffett. The bill eventually died in the Senate.

On the other hand, two separate bills to allow car manufacturers in Texas to directly sell to Texans also died at the Legislature this year. Large automobile dealers were opposed

to the bill, since it would have allowed any car manufacturer — not just Tesla Motors or other electric motor companies — to directly sell its product to people in the state.

Neither bill received a hearing in the House or Senate. Tesla and others have tried to pass similar legislation in prior sessions, and 20 states in the U.S. have already enacted related laws.

### **Cybersecurity**

To curb the rising number of cyberattacks on businesses and people across Texas, the Legislature passed two bills by state Rep. Giovanni Capriglione, R-Southlake, The Texas Cybersecurity Act and The Texas Cybercrime Act. The former will establish guidelines for the state on how to reduce and prevent cyberattacks, while the latter will penalize criminal activity related to cybercrimes.

House Bill 8, the Texas Cybersecurity Act, will require systems in the state to undergo audits and training on how to handle threats and attacks. The bill also calls for Texas to create a response plan if a cyberattack should happen by Sept. 1, 2018.

House Bill 9, the Texas Cybercrime Act, will create an offense for people found intentionally interrupting access to computer systems and networks or altering data without a business purpose. The penalties begin with a Class A misdemeanor and can increase from there, depending on the type or amount of criminal activity.

Both bills were sent to Gov. Abbott's desk for a signature during the regular session, and will become effective Sept. 1, 2017, if the governor signs them.

### **Department of Information Resources/State Contracting**

The Legislature passed a handful of measures involving the Texas Department of Information Resources (DIR) and state contracting this session.

Senate Bill 261 by state Sen. Judith Zaffirini, D-Laredo, is effective immediately. The bill clarifies that DIR is exempt from the state's \$1 million spending cap on state agency commodity purchases, so long as DIR is making bulk purchases of information technology commodities for multiple state agencies to use.

State Sen. Jane Nelson, R-Flower Mound, authored a couple bills — one related to DIR and another to state contracting — that are en route to Gov. Abbott's desk for a signature.

Senate Bill 532 requires DIR to perform risk assessments on each state agency's information technology infrastructure and security. If certain agencies are found to be at higher security or operational risks than others, DIR will guide those agencies to consider state data center services or cloud computing to store their data. Advocates of

SB 532 say cloud computing could save the state money and provide a more secure environment for information technology and data storage.

Senate Bill 533 builds on Senate Bill 20 — a bill the Legislature passed last session in 2015 that Nelson also authored — which reformed state contracting practices after procurement issues were reported. The bill authorizes the governor, lieutenant governor and speaker to require additional review of major information resource projects, while strengthening oversight and review of procurement plans. SB 533 establishes an officer in the state comptroller's office to coordinate contracting across state agencies and prohibits sensitive information in a contract from being posted online.

### **House Freedom Caucus**

A 12-member, right-leaning group formed at the beginning of session in January and dubbed themselves the Texas House Freedom Caucus. The group said its purpose was to represent grassroots organizations across the state, carrying out conservative and “liberty-minded” principles among the more moderate lower chamber.

As session carried on, lawmakers became wary of the caucus' presence. The caucus knocked hundreds of bills of House calendars — one specific instance known as the “Mother's Day Massacre” — and ran out the legislative clock on countless others.

Political preferences aside, the newly formed Freedom Caucus inarguably left a mark on this session.

### **SPECIAL SESSION?**

At the time of this report, it remains unclear if and when Gov. Abbott will summon state lawmakers back to the Capitol for a special session to handle extra business.

Speculation has swirled around when and what Abbott would include in his call for a special session; Lt. Gov. Patrick and other conservatives at the Legislature have urged the governor to call a special session to pass a version of the “bathroom bill” and property tax reform.

Under state law, special sessions can't last longer than 30 days, although they aren't required to last that long, either.

Former Gov. Rick Perry called legislators back for a special session July 1, 2009 — an entire month after the Legislature adjourned — and lawmakers finished the three issues Perry included in his call the following day, returning home in time for the Fourth of July.

Abbott's announcement on a potential special session is expected to come sometime after June 5.

***\*On June 6, Governor Greg Abbott announced that a Special Session of the 85<sup>th</sup> Texas Legislature will convene on July 18 to address 20 listed items, including sunset legislation, property tax reform, caps on state and local spending, preventing local governments from changing rules midway through construction projects, speeding up local government permitting process, municipal annexation reform and texting while driving. The Special Session is limited to 30 days and can only address the items included in the Governor's proclamation calling for the session.***