

## Last Week in the Legislature

### [“Life gets tee-jus, don’t it?”](#)

That’s an old, old song that describes the way I feel! “Open the door and the flies come in, close the door and you’re sweatin’ again..” In other words, no matter what you do, nothing seems to help. The House and the Senate are more or less at war and as a result, the House stopped scheduling Senate Bills for a day or two. During the battle, the House also didn’t work much one day, basically losing one day to pass bills with not many days left. It’s mostly over the budget, although the House is also upset at the Senate for scuttling the Sanctuary Cities bill that passed the House and is one of Perry’s emergency items.

You can read **Increased Revenue Estimate** below for more detail on the budget impasse, but what this means for us, so far, is that SB 566 to make some modest changes in the Public Accountancy Act has not yet been scheduled for House floor debate despite having been in the Calendars committee since April 26. First we were told we had to wait on House bills and this week we’ve been told we have to wait for resolution of the budget impasse, which as of this morning had not yet been resolved. The Calendars committee has begun to set bills again and House Calendars through Saturday have been posted. Virtually every member of the Calendars committee assures us the bill is ready to be set and several members have specifically requested the bill to be set, but as of this morning we are still waiting. Tedious is not adequate to describe the situation, but at least it’s printable.

Tedium may soon turn to panic with the looming deadlines: SB 566 must be on a published calendar by Sunday midnight, must be voted to third reading by Tuesday midnight and must be finally passed by midnight Wednesday. If it misses any of those deadlines, it’s dead.

Last session many bills died in Calendars or on the House floor because of chubbing by the Democrats. This year the same thing will happen because of a war between the House and Senate, which is mostly an argument between Republicans. Even with a two-thirds majority in the House, the Rs don’t seem to be able to take charge. Go figure...

### **Exception for TSBPA**

HB 599 by Rep. Jim Jackson (R-Carrollton) eliminates the accessibility of licensing agencies to information about misdemeanor deferred adjudication. Under the original bill, TSBPA would not have had access to this information in investigating complaints against CPAs or in vetting CPA exam candidates. Working with Jackson and CPA Rep. John Otto the bill was amended on the House floor to give TSBPA access to this information for offenses of theft, forgery and misapplication of fiduciary property or property of a financial institution. The bill passed the House last week and has been sent to the Senate Criminal Justice committee.

### **TSBPA Sunset Review Accelerated to 2013**

All state agencies are subject to sunset review every twelve years. The legislation authorizing the agency must be renewed by the legislature at that time or the agency goes out of business. TSBPA is in the unusual situation of having two different sunset review dates. TSBPA is a Self-directed, Semi-independent (SDSI) agency, which means it operates outside the legislative appropriations process, funding its activities from license and examination fees and paying \$700,000 into the state’s general fund for the privilege. The SDSI authorizing legislation was scheduled for sunset review in 2013 while the TSBPA’s underlying legislation, the Public Accountancy Act, was scheduled for review in 2015.

We suggested to the Sunset Commission that the SDSI date be moved back to coincide with the TSBPA date. SB 652 by Hegar (R-Katy), sponsored in the House by Bonnen (R-Angleton) did the reverse, moving the TSBPA date to 2013. The bill passed the House on Wednesday. The bill has some differences from the version passed by the Senate, but we anticipate the Senate will concur with the House passed version. While we preferred delay rather than acceleration, we do believe it is a good idea for the two sunset reviews to take place simultaneously.

Sunset review scheduled for 2013 means the review process will start immediately after the session. Even though the bill has not finally passed, TSBPA has already received an invitation from the Sunset Commission to attend a review briefing on June 2, 2011, the Thursday after the session ends on Monday, May 30. TSCPA will monitor the process and stand ready to offer suggestions and defend one of the strongest public accountancy acts in the country.

### **[Voter ID Goes to Governor.](#)**

One of Governor Perry's emergency items; widely reported in the press. 'Nuff said, click the link if you want to know more. Here's the scorecard on the other emergency items:

- Abortion sonograms has passed.
- Eminent domain has passed.
- The proposed federal balanced budget amendment has passed (see **Irony** below).
- Loser pays passed the House and is now in the Senate Affairs committee.
- Sanctuary Cities looks dead after the Senate substituted a completely new bill into the House bill, but Perry says he's not giving up.

### **Increased Revenue Estimate Doesn't Solve the Problem**

On Tuesday State Comptroller Susan Combs [issued a revised revenue estimate](#) for the 2012-13 biennium that increased available revenue by \$1.2 billion. State tax collections for the last three months have been substantially higher than predicted by Combs and legislators have been privately and publicly calling for a revised estimate. They now have it and it's higher than anticipated, but the bad news is they had already put \$700 million in the budget in anticipation, so this really gives them only an additional \$420 million.

As of today evidently everything about the budget has been agreed to except the spending level for education and whether to use another \$800 million from the rainy day fund. Yesterday the Senate sent the House a list of ten bills that must be passed to get the Senate to back off the additional rainy day fund usage. From what I've heard and read the bills are major bills that won't be easy to pass. Included on the list is SB 1811 the fiscal matters bill that has already been postponed about nine times and is on today's calendar. This bill has over 200 amendments pre-filed with some estimating the floor debate could take all day or longer.

Before this ten bill ultimatum was issued, Senate Finance Chairman Ogden (R-Bryan) said he didn't think a budget agreement was possible before a special session. My money's on Ogden.

The [Quorum Report](#) said that the "Conference report is short \$4.8 billion in general revenue on Medicaid caseload growth." Last week I reported that the budget would only fund Medicare through Mar. 2013. This week I was told by an insider that Medicare is frequently underfunded and that part of the budget is "no big deal." If \$4.5 billion is no big deal, why is \$800 million jamming up the works?

How did the House react to the Senate ultimatum? Speaker Joe Straus was quoted in this morning's [Austin American-Statesman](#): "In any successful negotiation, both sides have to make compromises. The House has gone more than halfway to meet the Senate, and it is now time for the Senate to do its part by making additional spending cuts. I look forward to continuing to work with the Senate and am hopeful that we can pass a budget that lives within our means." Lt. Gov. Dewhurst's response shows that ultimatums are not, well....ultimatums. Dewhurst: "The House reaction to the proposal we made this afternoon shows how important public education is to them and us. Although we've got a couple of differences, I feel confident we're going to be able to reach agreement and pass a budget..."

### **Irony**

The legislature has passed another of Perry's emergencies, a resolution calling for the federal government to pass a balanced budget amendment as reported by [The Texas Tribune](#). No matter how bad is the Texas budget process, comparing to the federal mess makes Texas look reasonable.

### **No Campus Guns**

The bill authorizing guns on campus was attached as an amendment to SB 1581, an important fiscal matters bill for higher education that needs to pass as part of the budget package. [The bill was killed in the House yesterday on a point of order](#). That means the bill has to go back to the Senate to cure the procedural issue. If it comes back, it likely won't have guns on campus included.

### **School Property Taxes May (Will?) Go Up**

This week Lt. Gov. Dewhurst implied that local school property taxes would likely go up under the proposed House budget, but then stopped short of an out and out predication by saying "beware of unintended consequences." Before the legislative session began, Sen. Ogden privately predicted school property taxes would likely increase and that was likely the only fear that might drive some state tax increase. Dewhurst is certainly not suggesting any tax increases, but he is raising the specter of property tax increases to garner support for the Senate version of the budget. The [Quorum Report](#) quoted Finance consultant Lynn Moak of *Moak Casey & Associates*: "Districts can and will raise taxes even at the Senate level."

### **Budget vs. Redistricting**

Is it a standoff? Early in the week pundits were speculating that the Senate would hold the House redistricting bill, HB 150, hostage until a budget agreement was reached. On the other hand, rumor had it that the House would not take up most Senate bills until HB 150 was passed. The drama was intensified when Senate Finance Chairman Ogden (R-Bryan) asked the Senate to suspend the debate on HB 150 while the Senate caucused and they did. Turns out Ogden had just learned that Combs had raised the revenue estimate by \$1.2 billion and wanted to talk with the senators about this good news. The Senate came back and approved HB 150 by a vote of 22-9 and Senate bills started flowing in the House – that is until the budget impasse clogged up the works a day later.

### **Redistricting Drama**

Just before passing HB 150, the Senate passed SB 31 by Seliger (R-Amarillo), the Senate redistricting bill. In last week's newsletter we reported on the then just released SB 31, including objections by some senators in Travis and Tarrant counties. Amendments were offered by Wendy Davis (D-Fort Worth) to clear up her objections to the map and by Sen. Uresti (D-San Antonio) to resolve complaints by Sens. Watson and Zaffirini. The Davis amendments were tabled but the Uresti amendment was passed.

### **Congressional Redistricting?**

The Senate redistricting plan went from first public exposure to Senate passage in less than a week. The Senate Redistricting committee planned a similar schedule for Congressional redistricting next week. Seliger originally announced the bill would be out this week and testimony taken next week on Tuesday and then on Wednesday said he wasn't sure when the bill would be ready. *Texas Weekly* says there is no way the legislature could pass congressional redistricting in the time remaining, opining: "This Legislature couldn't pass the King James Bible that fast."

### **Franchise Tax Bills**

- HB 2383 by Geren (R-Fort Worth) to authorize an interim study of the efficacy of a franchise tax credit for research and development expenditures passed the House last Friday and has been recommended for the local and uncontested calendar in the Senate.
- HB 262 by Hilderbran (R-Kerrville) to extend the \$1 million minimum revenue requirement for franchise tax for two years died in the Calendars committee.

### **Tort Reform**

- A Senate committee substitute for HB 2973 by Hunter, sponsored in the Senate by Ellis, to protect an individual's right to free speech, petition or association without being intimidated by those with substantial resources through threatened litigation passed the Senate on Wednesday. There is a minor difference between the Senate and House versions, but it is likely Hunter will recommend the House accept the changes. This bill is titled The Citizen Protection Act and referred to nationwide as Strategic Lawsuits Against Public Participants (SLAPP). Similar legislation has been passed in 28 other jurisdictions.

The stated purpose of the legislation is to protect citizens' rights to free speech and assembly from being overpowered by the rich and powerful. A powerful plaintiff can create a cause of action against anyone, even if it is fairly obvious the complaint has little merit. And when a defendant is in the wrong, if the defendant has deep pockets the just opposition can be overwhelmed with expensive litigation that can be interminable. This legislation equips individuals and judges with legal weapons to give the not-so-rich and powerful a chance, so say the bill supporters.

- SB 1216 by Estes to allow a challenge to mandatory arbitration clauses was approved by the House Judiciary committee.

### **Assorted Bills**

- HB 257 by Hilderbran, sponsored in the Senate by Patrick, to accelerate unclaimed property reporting and transfer to the state was approved by the Senate Finance committee. This bill provides some additional revenue for the budget.
- HB 2947 by Coleman sponsored in the Senate by Shapiro, which makes Hospital District audit work papers confidential and not subject to public records requests was approved by the Senate Select Committee on Open Government with one slight change from the House approved bill.
- HB 2615 by Veasey to require the Consumer Credit Commissioner to prepare a one page document referencing financial literacy learning opportunities and to require the Health and Human Services Agency to offer that document to persons served by the agency has passed the legislature.

- HB 3002 by Hughes, sponsored by Eltife in the Senate, to raise the minimum threshold requiring an audit of a water district from \$100,000 in revenue or assets to \$250,000 passed the House last Friday and is recommended for the consent calendar in the Senate.

## 42

The House has passed the resolution designating 42 as the official state table game of Texas. The game, played with dominos, was invented by two Texas youths in 1887 when they were prohibited from playing the game of Whisk with those evil playing cards. Check out [HCR 84](#) for the details.

### [New gambling panel sparks dissent in Senate](#)

Just when everyone thought gambling was dead for this session, Senate State Affairs Chairman Duncan (R-Lubbock) appointed a new subcommittee to hear SJR 34 by Ellis (D-Houston) which proposes a constitutional amendment to allow casinos and slot machines by licensed operators and some Indian tribes to provide funding for property tax relief and additional financial aid for college students. It's a long story with the same result – there will be no gambling resolution this session. With the panel stacked against him, Ellis withdrew the resolution so the new subcommittee has nothing to do. No committee meetings have been scheduled. What was it Rep. Dutton (D-Houston) said last week? "We have mastered the fine art of taking a long time to do nothing;"

### **Pork Chopper Bill Finally Passes**

HB 716 by Sid Miller (R-Stephenville) to authorize helicopter hog hunting by non-professional hunters has finally passed. According to someone who knows, it's very hard to shoot a feral hog from a helicopter, unless you are using a machine gun. I didn't know you'd get to use a machine gun; now that might be fun!

### **Noodling Now Legal**

All you need is a fishing license. What's noodling? It's also called "grabbing, graveling, hogging, dogging, gurgling, tickling or stumping." Still confused? The Senate passed the House Bill that legalizes hand fishing. It's for catfish; evidently you stick your arm in a catfish den and pull the fish out when it bites your arm. It must be true; it's in the [Dallas Morning News](#). If you're a noodler, let me know. I'd like to compliment your bravery or question your good sense, I'm not sure which.

### **Nothing is Impossible**

I think I'll close today with a quote from Sen. Ogden: "Nothing's impossible as long as the Legislature is in session." Now that's really scary!

### **Time is Running Out**

- 10 days until the end of session.
- May 20 is the last day for House bills on the Local and Consent calendar.
- May 24 is the last day for the House to approve Senate bills on second reading.
- Any bills passed from now on can be signed or vetoed after the end of the session.

Bob Owen  
May 20, 2011