

## Last Week in the Legislature

### The Battle Between the House and Senate

As we are fast approaching the 60-day deadline for the unlimited filing of bills in the Legislature, things are starting to heat up. There is always a natural tension between the House and Senate when it comes to the legislative process. This is caused by structural and political differences between the two bodies. But this year, many observers feel there is an added level of strain between the two chambers because of differences between their two leaders. House Speaker Joe Straus is a traditional Republican. Lt. Gov. Dan Patrick is an ultra-conservative. The differences between them seem more pronounced this session as both enjoy strong support in their chambers. Speaker Straus had no opposition in his re-election campaign and was unanimously elected speaker again for a fifth term. Lt. Gov. Patrick has developed into a major power broker in the state as I mentioned in last week's newsletter.

One example of this sharper divide between the two men this year relates to the filing of the position of state auditor, what most would consider to be an innocuous position. The state has been without a state auditor for more than a year now since former State Auditor John Keel retired in January of 2016. The primary roadblock is because Patrick and Straus haven't agreed on a replacement. The committee that selects the auditor is co-chaired by Straus and Patrick. It hasn't met since March 2007 and they do not appear to be in any rush to convene. The stalled process suggests a lack of trust between the two Republicans over who should be put in charge of evaluating state programs. In the meantime, by law, the state auditor's office continues to function under the leadership of an interim auditor.

Another example of the divide is that for the first time, the Texas House and the Senate have used different starting points to calculate their proposed state budgets, meaning they cannot agree on how to view the current budget, much less how to shape the next one. The primary difference is that the Senate didn't assume that lawmakers this year will pass a supplemental budget, which is a measure that fills in gaps in the current two-year budget caused by revenue coming in below expectations or costs exceeding the appropriated amount.

Because the Legislature chronically underfunds some programs, passing a supplemental budget has become routine and often mandatory. For example, in recent sessions lawmakers have ignored population growth and inflation in appropriating money for Medicaid, the state-federal health care program for low-income Texans.

This year's Senate Bill 1 makes no stopgap payment to Medicaid, allowing the upper chamber to claim a lower price tag for its spending plan, but ignoring likely unavoidable costs. The difference in assumptions means the House and the Senate are starting from even farther apart during a session that could be defined by a contentious budget battle. Some already foresee the Legislature going to a Special Session to resolve the budget challenge.

Finally, the divide between Patrick and Straus also shows up when it comes to some of the socially conservative issues the lieutenant governor has on his agenda. This year, Patrick is again pushing items that will appeal to social conservatives, promising to deliver on school vouchers and promoting the “bathroom bill,” which is opposed by business groups and other civil liberties organizations. While the dynamic is the same as the last session on these social issues, this year Straus and Patrick appear to be staking out their positions earlier. Straus, for instance, has already voiced skepticism over the voucher and bathroom bills.

So all of these things combine for a likelihood of extreme division between the House and Senate when they finally get to “legislating.” Some feel it is creating an environment where very little legislation will get passed, especially if it requires cooperation and accommodation between the two chambers. And that could spell trouble for all legislation, including the bills on the legislative issues that TSCPA would like to see passed. Our fate will be tied somewhat to, and play out within, this larger combative environment. Stay tuned to see how this all plays out.

### **Local Control is Good Except When it Isn't**

One of the central tenets of conservatism is that local control/government is the best control/government. This argument is certainly used against the federal government all the time. Conservatives normally argue that getting the decision making closest to the people is best. Apparently, that philosophy begins to change or breakdown when you see the locals doing things you don't like, such as local banning of fracking, or local banning of driver services like Uber or Lyft, or adopting anti-discrimination rules that allow transgender people to use the bathroom of their choice. Then all of a sudden, the locals don't know what they are doing and need to be controlled by the next level of government – the state. There are a number of examples where the Texas Legislature has, or has tried to, override local decisions. One more popped up this week.

This proposed legislation, Senate Bill 451, was introduced by Senator Kelly Hancock (R-North Richland Hills). It would limit local government control of short-term home rentals in Texas. Basically, it would prevent Texas cities from banning or restricting short-term rentals. Austin, San Antonio and Fort Worth are among cities that have enacted such restrictions in recent years after complaints from citizens about the effects such short-term rentals were having on their neighborhoods. Businesses like Airbnb and others don't like those kinds of restrictions. You can read an article about SB 451 from the *Texas Tribune* highlighting the legislation here:

<https://www.texastribune.org/2017/02/25/bill-would-overrule-local-legislation-over-short-term-rentals/>

I think it just reinforces that there are always two sides (at least) to every issue and where we each may fall on it is greatly dependent upon whether we see it personally affecting us or not. In the words of Oscar Levant, “there are two sides to every issue – my side and the wrong side!”

## **The Call for a Constitutional Convention**

In his State of the State address in January, Governor Greg Abbott called on the Legislature to address four “Emergency Items.” One of those was a call to approve a resolution to support a convention of states to amend the U.S. Constitution. This week, the Texas Senate did just that by passing Senate Joint Resolution 2 by a 20 to 11 vote. You can view it here:

<http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/SJ00002E.pdf#navpanes=0>

Adding some excitement to the debate, the Senate also agreed to impose a state jail penalty on a legislator who violates his or her oath as a delegate to a potential national Convention of States to amend the U.S. Constitution.

The decision to impose jail time on a faithless delegate came on an amendment by Senator Bryan Hughes (R-Mineola). This did not sit well with Senator Brian Birdwell (R-Granbury), who was the chief author of SJR 2. He strenuously objected to the amendment, saying it would inappropriately criminalize legislative activity. Birdwell said he thought the most serious penalty the Legislature ought to be able to impose on a member is expulsion. Regardless, the Senate adopted the amendment on a 19 to 11 vote.

Before adopting SJR 2, the Senate began its consideration of the call for a Convention of States by approving a resolution to wipe the slate clean of all 14 previous calls by the Texas Legislature for constitutional conventions going back to 1899. Seems we have attempted this a number of times before. The Senate did agree to keep on the books a 1977 call for a constitutional convention on a balanced budget amendment — which has been approved by 28 states.

SJR 2 would call for a Convention of States with limited objectives: “to impose fiscal restraints on the federal government, to limit the power and jurisdiction of the federal government and to limit the terms of office of federal officials and members of Congress.”

Senator Hughes’ amendment to stiffen penalties for a rogue delegate who sought to enact amendments that exceeded that authority was in response to concerns about a runaway convention. Once a convention starts, there is no telling what can happen. It’s really up to the delegates who are in attendance, so you never really know what issues will materialize once a convention starts.

Two-thirds of the states need to call for the convention in order for it to happen. As of now, eight states have joined the call. So even if Texas passes this resolution, there will still be a ways to go before a convention is a reality. It is not clear where the House is going to come out on this issue. There is a House resolution that’s been introduced, HJR 39, but the House has not taken any action on it as of yet. You can see the House resolution here:

<http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/HJ00039I.pdf#navpanes=0>

### **Voucher Bill May Never Get a Vote**

The odds of the school voucher bill getting passed this session took a further nose dive this week when the Chairman of the House Public Education Committee, Rep. Dan Huberty (R-Houston), indicated that he thought the issue was dead in this session. As the chairman of the committee of jurisdiction in the House, Huberty's opinion carries a lot of weight. He could always just sit on the bill in his committee and never bring it up, which is what some are now banking on after his remarks. That leaves some wondering if the bill will even get a vote in the Senate, as some senators would just as soon avoid taking a position on the issue if they know the House is not going to take it up.

For more details on this issue and an interesting take on how legislators kill legislation to avoid taking positions, see this article from the *Texas Tribune*:

<https://www.texastribune.org/2017/03/01/analysis-voucher-opponent-protecting-texas-legislators-voters/>

### **TSCPA Member, Mike Collier, to Challenge Dan Patrick for Lt. Governor in 2018**

TSCPA and Houston Chapter member, Mike Collier, announced this week that he is "assembling a campaign team to run against Dan Patrick for Texas Lt. Governor." Collier, a Democrat, is stepping down from his position as Democratic Party finance chairman to start his campaign.

<https://www.texastribune.org/2017/03/02/collier-challenge-patrick-lieutenant-governor/>

### **Legislative Etiquette - Is That an Oxymoron?**

The brouhaha of the week at the Capitol was when the Chair of the House Administration Committee, Charlie Geren (R- Fort Worth), attended meetings of both the Democratic and Republican caucuses to ask them not to secretly tape record phone conversations with other legislators. The rumor is that some legislators were taping conversations with their colleagues although no one, including Geren, is naming names.

Geren's committee oversees the rules of the House. While he noted it is not illegal to secretly tape record a phone conversation of which you are a part, he said it isn't very good etiquette. "I've asked members of both parties not to do it, but that doesn't mean they can or cannot," Geren told the *Texas Tribune*. "I don't think it's very professional, but if they do it, they do it."

### **Let's Celebrate Alamo Day!**

We may all soon be celebrating a new Texas holiday each year if Rep. Jason Villalba (R- Dallas) has his way. This week, he introduced a bill, HB 724, to recognize March 6 as Alamo Day in recognition of the Battle of the Alamo.

In his press release, Villalba noted, "Alamo Day will celebrate the heroic actions of the volunteer Texan soldiers who occupied the Alamo during Texas' war for independence from

Mexico. Regardless of their lack of manpower and sufficient troops, these brave Texans remained steadfastly dedicated to protecting the Franciscan fort in San Antonio. After a bloody 13 day struggle, Mexican forces overtook the Alamo on March 6, 1836."

Although the Alamo was reclaimed on April 21, 1836, Villalba said the "loyalty demonstrated at the fall of the Alamo demonstrates the character of the men and women responsible for the Great State we know and love today."

"Let your tongue speak what your heart thinks"

- Davy Crockett

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