

The Litigation Section of the State Bar of Texas
News for the Bar
81st Legislative Session Wrap-up
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In the months leading up to the 81st Legislative Session the consensus was that the session would yield major reforms in transportation, insurance, the judiciary and education, with a primary concern being the looming budget short-fall. By the time January 13, 2009 arrived, all signs pointed to a promising 140 days. Members enjoyed a very productive interim and were already well on their way to filing a record 7419 combined bills aimed at, or at least pointed somewhere in the vicinity of, addressing many of the problems faced by the State. A new Speaker brought with him renewed camaraderie in the House. It even looked as though the ever-present budget crisis would be diverted as Congress was in the midst of passing the controversial Economic Recovery Act which would remove many of the challenges that stood in the way of the Legislature producing a balanced state budget for the 2010-2011 biennium. Everything was falling into place.

The consensus was quickly proven wrong. Of the 7419 bills filed this session, only 19.6% (1459) were sent to the Governor for approval – a twenty-year low. Measures once sure to pass began to be threatened, and ultimately failed. Sunset Legislation for the Texas Departments of Insurance and Transportation, as well as many bills related to litigation (listed below) all met untimely ends. The reason can be summarized in two words – voter identification. I’m sure if you have watched the news at all, you know all about the Voter ID issue. If not, here’s a synopsis in 180 words or less:

Because of Voter ID, the promise of the 81st was quickly dashed before it really began. On opening day we saw the Senate do away with the decades-old tradition of honoring the two-thirds rule, which requires consent of 21 of the 31 senators to allow a bill on the floor for debate. In March, we saw a procedural oddity when the Lieutenant Governor referred the bill to a committee of the whole rather than a traditional Senate committee. Of course, you know about the five-day local calendar marathon in the House of Representatives to ensure that the measure didn’t come up before House deadline to hear Senate Bills on second reading. If you’ve been under a rock, search for “chubbing” in your search-engine of choice. We saw an unprecedented number of rules-suspensions in the House and Senate in an attempt to salvage legislation that died in the House as a result, and though I have yet to count, I am sure the record was smashed for most points of order and parliamentary inquiries in a single session.

Though a majority of litigation-related bills failed, some new legislation will affect lawyers. For example:

1. HB 148 and HB 3515 stiffened the criminal penalties for barratry and the failure to report the same. However, efforts to create a civil cause of action for clients against attorneys who engaged in barratry were not successful.
2. SB 956 created a new public law school in downtown Dallas to be run by the University of North Texas System.
3. HB 1665 significantly increased fines for jurors who fail to respond to a summons.
4. \$26 million was appropriated to assist Access to Justice to supplement the IOLTA shortfall.

Notable “non-events” occurred related to litigation. Specifically, no legislation was passed relating to:

1. the Texas Supreme Court’s *Entergy v. Summers* decision;
2. the “paid or incurred” issue;
3. causation standards for asbestos-related mesothelioma cases;
4. restructuring the court system;
5. permitting jurors to ask questions during trial;
6. restriction of arbitration provisions;
7. establishing a law school in Brownsville; and
8. selection of judges.

One bill in particular that has received little press exemplifies the Jekyll and Hyde nature of the Texas Legislature. House Joint Resolution 39, which passed unanimously out of both houses, ratified the Twenty-Fourth Amendment of the United States Constitution which prohibits the denial or abridgment of the right to vote for failure to pay any poll tax or other tax. If you recall, the Twenty-Fourth Amendment was adopted by Congress in 1962, and formalized in 1964. Texas was one of twelve states not to ratify the XXIV Amendment.

Two bills that most agreed were keys to avoiding a special session were also passed: SB 1, the General Appropriations Bill, is constitutionally the only bill that must pass, and SB 14 as amended to HB 4409, the Windstorm Bill. Unfortunately, most of us were wrong once again. The Legislature’s failure to pass the aforementioned Sunset Bills, in addition to their failure to move the Sunset Safety Net bill to the Governor’s desk may result in the potential winding-down of two of the larger agencies in the State. This has resulted in the Governor’s recent revelation that he will be calling a Special Session in the future to deal with these issues. Stay tuned.