



THE RESULTS

The 2013 Report of the Texas Legislature
83rd Regular and Special Sessions



TEXAS
ASSOCIATION OF
BUSINESS

A sepia-toned photograph of the Texas State Capitol building in Austin, Texas. The image shows the grand dome and the classical facade of the building, with a statue on top of the dome. The sky is cloudy. The text is overlaid on the center of the image.

THE RESULTS

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Texas businesses fared well in the 83rd Legislative Session. As usual we didn't get everything we wanted or needed, but there were plenty of wins.

As far as what legislation passed this session, we are extremely happy with the business tax cut that passed in the final hours of the session, totaling around \$1.3 billion. The franchise tax rate was reduced, the \$1 million exemption and deduction were included and a separate bill reconstituting a research and development tax credit was approved. All of those things will greatly help keep the Texas business climate strong.

While there have been some erroneous numbers put out there about the state's budget, let me assure you that the budget only allows for modest and needed growth. It is a very responsible document that meets the basic needs of the state.

Another major victory is the approval of a funding plan for the statewide water plan, using \$2 billion in Rainy Day Fund money to create a new fund to back bonds to build local water projects. That is exactly what the state needs to ensure we will have a reliable water supply to meet our future needs.

While those victories will help business in Texas for years to come, there were some other priorities that were not completed this session. One major goal not achieved was tying higher education funding to outcomes, instead of just the number of bodies in a classroom. We strongly supported a bill that would have tied as much as 25 percent of the state's funding to institutions of higher education to increasing completion rates.

Current four-year completion numbers show that we will need vast improvement if we are going to meet the needs of Texas employers in the future. Right now around 30 percent of adults have some kind of post-secondary degree or certificate and that number needs to grow to 60 percent. Keeping students in school and ensuring they get those degrees and certificates should be the number one goal of our universities, and I cannot think of a better incentive than money to move that priority right to the top.

There was also the disappointment of HB 5. While we agreed with the idea of cutting the number of end-of-course exams, we believe the legislation went way too far in changing, and weakening, graduation requirements. We feel that will severely decrease the number of students graduating career or college ready, numbers that are already low in Texas no matter how you measure it. It is our hope that our Lawmakers will revisit graduation requirements in the near future and look at that issue separately from the issue of standardized testing and realize that we must require higher level courses for graduation and college admission in order for our students to succeed.

With that said I believe our Lawmakers overall did a good job of addressing the needs of Texas businesses and kept the Texas business climate the best in the nation.

WINS

The Budget (SB 1) PASSED

Thanks to Lawmakers a lot of good things are included in this budget, such as setting up the framework to fund the statewide water plan, investing \$2 billion from the Rainy Day Fund and increasing public education formula funding by \$3.4 billion. The budget reflects the priorities of the people of Texas in education, mental health services, substance abuse treatment, veterans' services and Medicaid fraud reduction.

It reduces taxes and fees by \$1.4 billion, reduces money going into dedicated funds by \$1.5 billion, replaces \$400 million in diversions from the transportation fund to the Department of Public Safety and leaves \$650 million unspent in General Revenue.

Business Tax Relief (HB 500) PASSED

This bill means at least \$700 million in business tax relief. It lowers the franchise tax rate, makes the \$1 million exemption from paying franchise taxes permanent and allows businesses to deduct their first \$1 million off of their franchise tax bill. We believe that this tax savings will help businesses meet the rising cost of doing business and help to create new jobs and draw new business to Texas.

Research and Development Tax Credit (HB 800) PASSED

Texas was on the verge of being the only state without a tax credit for research and development until HB 800 was passed. We believe this bill, put together with other incentives and Texas' strong overall business climate will greatly increase the states' ability to draw new research and development projects. The bill offers a choice of either franchise tax credits or sales tax credits on purchases for research and development equipment. This will mean new industry and new high paying jobs in Texas.

Texas Economic Development Act Extension (HB 3390) PASSED

This bill helps business expand by extending school property tax breaks and tax credits under chapter 313 of the tax code.

Budget Reform and Transparency (HB 6/HB 7) PASSED

A priority for TAB in the 83rd Legislature was addressing the long-standing issue of budget transparency and the use of dedicated fee revenues to balance the budget, rather

than for the purposes for which they were collected. Although it is unfortunate that a more comprehensive and permanent solution to this problem was not enacted by the 83rd Legislature, some significant progress toward improving the budget and revenue process was achieved. HB 6 addresses new funds or accounts created during the session, and determines whether new revenues will be dedicated or not. During the legislative process, HB 6 included provisions that would have significantly limited as a matter of law the amount of fees and other revenues that the Comptroller could use to certify the budget. This would have added meaningful protections to make fees available for their intended purposes and gradually ended the practice of using these revenues for purposes not consistent with their intent. In the end, these mandatory limits were removed from the bill. In HB 7, however, a number of specific accounts were addressed and either the uses of certain revenues were amended so that the money could be put to productive use, or revenues were decreased, which saves taxpayers money in the future and allows excess balances to be spent down before individuals and businesses are asked to pay more. For example, HB 7 decreased the system benefit fee that is assessed to electric energy customers to zero and authorized the significant fund balance to be spent for its intended purpose before any additional fee is collected.

Property Tax Exemption for Pollution Control Equipment (HB 1897) PASSED

This bill addresses issues within the program under which equipment used for pollution control qualifies for a property tax exemption. The bill expressly recognizes that chief appraisers and taxing units have the discretion to enter into settlement agreements with entities claiming an exemption and it establishes a time limit on the review and approval by TCEQ of a claim by a property owner of the qualification of equipment as control equipment eligible for a tax exemption.

Offshore Spill Response and Well Containment Equipment Tax Exemption (HB 1712) PASSED

This bill provides a property and sales and use tax exemption for equipment used for offshore spill response and well containment. The measure will enable Texas to successfully compete with other coastal states for the economic and job opportunities associated with the siting of offshore spill response facilities being installed in response to new federal requirements for control of oil spills in the Gulf of Mexico.

WINS

Limiting the liability of persons who employ persons with criminal convictions (*HB 1188*) **PASSED**

This bill immunizes employers from being sued for negligent hiring in most circumstances when they hire an ex-offender.

Clarifying what information is available in the sex offender database (*SB 369*) **PASSED**

The bill removes employers' names and addresses from the sex offender registry, which will reduce harassment of innocent employers.

Restricting access to records of children convicted of or receiving deferred disposition for certain fine-only misdemeanors (*SB 394*) **PASSED**

This bill allows children to have fine-only, non-traffic Class C misdemeanors sealed if they are found not guilty, the case is dismissed, or they are granted deferred disposition.

Clarifying the law so that people convicted of Class C misdemeanors can keep occupational licenses (*HB 798*) **PASSED**

This bill protects individuals from being denied an occupational license or having their license revoked due to a fine-only Class C misdemeanor.

Changes procedures for the sentencing and placement on community supervision of defendants charged with the commission of a state jail felony (*SB 1173*) **PASSED**

This bill allows for split sentencing of state jail felons so that they can be released from state jail on to probation rather than being simply discharged with no probation option.

LOSSES

Procedures for Defendants who Successfully Complete a Period of State Jail Felony Community Supervision (*HB 1790*) **VETOED**

This bill provides an incentive for nonviolent state jail felons to accept a probation offer and comply with all conditions, including paying all restitution, so that they can petition the court several years after conviction to have the offense reduced to a Class A misdemeanor, which will make them more employable.



WINS

Water Infrastructure Fund (HB 4) **PASSED**

This bill establishes the state water implementation fund and revises the authority of the Texas Water Development Board (TWDB) to enhance existing programs for financial assistance to water infrastructure projects. The bill expands on financial assistance programs and provides greater flexibility to TWDB in making decisions and choosing options for financial assistance. The bill also changes the governance of the Board by establishing a three-member, full-time commission to head the agency.

Funding for Water Infrastructure (SJR 1/HB 1025) **PASSED**

While HB 4 created the administrative structure and authority for enhancing financial assistance for water infrastructure projects, SJR 1 and HB 1025 will provide the actual funding. SJR 1 authorizes a constitutional amendment which will go before the voters to establish that expenditures from the water implementation fund that will be invested in water projects as loans and repaid by local sponsors are constitutionally dedicated and do not count against the state's spending limit. HB 1025 authorizes the transfer of \$2 billion from the Economic Stabilization Fund to the Water Infrastructure Fund contingent on voter approval of the constitutional amendment authorized in SJR 1. This transfer will allow the TWDB to access funds to be loaned and repaid to finance additional water projects without further cost to taxpayers.

Recycling Incentives for Oil and Gas Wastewaters (HB 2767) **PASSED**

This bill establishes the conditions under which a person who receives oil and gas waste for the purpose of recycling becomes the owner of the waste and, likewise, a person receiving the treated product or byproduct is considered the subsequent owner. The bill provides for a protection from tort liability for any person who transfers treated waste as to the subsequent use of the waste by another party who takes possession of the product.

LOSSES

Reform of the Water Rights Permitting Process (HB 3234) **DIED**

This bill would have addressed another example of how an antiquated, inefficient permit process in Texas hinders economic development and business opportunity by reforming the permit process in Texas for approving water rights applications. The bill would have established a specific process with conditions, time frames and procedures for receipt, public input and processing of applications for water rights. It would include provisions related to contested hearings such as defining the number and scope of issues to be referred to SOAH, maximum duration of hearings and qualification of parties.



Public Education

WINS

Teacher Professional Development and Enrichment

(HB 1751, HB 1752) **PASSED**

HB 1751 seeks to transform educator quality and effectiveness, and district administrative practices, to improve the learning and academic performance of a district's most educationally disadvantaged or underserved students.

HB 1752 creates a Texas Teacher Residency Program at a public institution of higher education that has formed a partnership with an area school district or open-enrollment charter school.

School Accountability

(HB 2824, HB 2836) **VETOED**

HB 2824 would have created an alternative assessment system for a small subset of school districts. The legislation's alternative assessments diminished the rigor needed to create the educated workforce needed by business today. After an analysis of the graduation rate and percentage of their students who graduate career and college ready, we do not believe these school districts are high performing districts and should not be exempted from the accountability system.

HB 2836 would have imposed unsound and risky assessment policies on the Texas Education Agency and created an "advisory" committee that would have second-guessed and undermined the work of the Agency and State Board of Education on early and middle grade level learning objectives and assessments.

Curriculum Flexibility (SB 1365) **PASSED**

SB 1365 expands the credit by exam process. It provides students enhanced opportunities to advance if they have demonstrated knowledge of a subject matter or demonstrated that they are achieving at a level that is above their existing grade level.

Workforce Development (HB 1831, HB 2201) **PASSED**

HB 1831 creates a pilot program for adults 19-50 to obtain a high school diploma and industry certification through charter schools. This will help target a population that has been ignored in the traditional education setting, and prepare them to enter the workforce.

HB 2201 increases the courses offered in the career and technology education curriculum. This will ensure that students have the access to practical real world valued courses in the area of math.

Charter Schools (SB 2, SB 1538) **PASSED**

SB 2 provides much needed room for growth of charter schools. This bill eases some of the educational demand, providing students and parents relief to some of the endless waiting for admission. In addition, SB 2 makes it easier for existing charter schools to expand while giving the Commissioner of Education tools to close chronically underperforming charters.

SB 1538 ensures drop-out recovery charter schools can continue to operate. The legislation ensures students who receive diplomas from a charter school are counted toward the school's graduation rate, regardless of the whether the student graduates with their cohort or not.

LOSSES

School Testing and Accountability (HB 5) **PASSED**

HB 5 was the public school accountability bill of the session which eroded assessments and curriculum requirements. TAB believes that the bill is a major retreat from the rigorous high school preparation and school accountability measures that Texas needs in order to remain economically competitive globally.

Student Flexibility (HB 1926) **VETOED**

HB 1926 would have encouraged expansion of the state virtual school network so that students could obtain the education that best suits them, regardless of the school district they attend.

Quality Pre-K (HB 376) PASSED

HB 376 gives preferential treatment for a pre-k program that is not considered by experts as a quality program. TAB is a long-time and strong advocate of quality pre-k programs, however we do not support preferential treatment for a program that has no correlation with school readiness, and fails to track data verifying how a child fares in kindergarten.

Parental Choice

(SB 23, SB 1263, SB 1775) KILLED

SB 23 would have created the Texas Equal Opportunity Scholarship Program. The legislation would have enabled businesses to donate a portion of the amount they owe for the franchise tax or state premium tax to fund education scholarships for students to attend a school of their choice.

SB 1263 would have provided much needed educational opportunities for students and parents. The bill allowed parents, whose students are in an academically unacceptable school, to petition the commissioner of education to take action to remediate the campus.

SB 1775 would have provided students and their parents the opportunity to transfer, as room is available, to schools of their choice within their own district or into another district.

DRAW

School Testing and Accountability (HB 866) PASSED

HB 866 lowered the current standards for our elementary and middle school students. Eliminating the annual testing of students will also prevent the ability to measure the growth of students year to year. TAB opposes lowering current assessments and rigor for students. While the legislation did become law, it will not be implemented because the state was denied a waiver from the Federal Accountability System.

Higher Education

WINS

Tuition Freeze (HB 29) PASSED

HB 29 requires institutions of higher education to offer entering undergraduate students (including transfer students) the opportunity to participate in a fixed tuition plan that freezes tuition for 12 consecutive semesters.

Common Course Numbering System and Transferability (SB 215) PASSED

SB 215 requires the governing board of institutions of higher education to identify any course included in the common course numbering system that has been added to or removed from the institution's list for the current academic year; and it requires the governing board to certify that the institution does not prohibit the acceptance of transfer credit based solely on the accreditation of the sending institution; or include language in any materials published by the institution, whether in printed or electronic form, suggesting that a prohibition exists. It requires the board to encourage cooperative programs and agreements among institutions of higher education, including programs and agreements relating to degree offerings, research activities, and library and computer sharing. It further requires the board to encourage the transferability of lower division course credit among institutions of higher education.

DRAW

Completion Based Funding (Part of HB 1)

Institutions of higher education are funded based on the number of students enrolled. This method of funding gives schools the incentive to have students show up on the 12th day of classes, the day census of colleges and universities is taken and sets how much money they will receive. However, this does not provide the proper focus needed to ensure students complete their goal. Completion based funding would do just that, assigning 10 percent of institutions of higher education funding based on a student's obtainment of a certificate or degree. It is a draw because it this policy will be implemented for two year institutions of higher education but not four year institutions.

WINS

Discrimination in Pay

(HB 950) **VETOED**

This bill would have put into state law the Lilly Ledbetter Fair Pay Act. TAB strongly supports equal employment opportunity, but believes this bill is not the solution. The Lilly Ledbetter Fair Pay Act was the first piece of legislation signed by President Obama in 2009. HB 950, as the federal law does, applies the paycheck rule broadly. It is possible that claims could be filed years after an allegedly discriminatory act occurred by allowing the statute of limitations to start over again after the receipt of each pay check. In addition, the legislation would have not limited it to cases of intentional discrimination, but would also apply to cases based on the theory of disparate impact.

Drug Screening for Unemployment Insurance Applicants

(SB 21) **PASSED**

This bill directs the Texas Workforce Commission to adopt a drug screening testing program for those receiving unemployment compensation benefits and who work in industries that traditionally drug screen as a condition of employment. It requires applicants to complete a written questionnaire to determine the reasonable likelihood that an individual is using an illegal substance. Individuals must pass a test to receive benefits or participate in a drug treatment program. Applicants can re-take the test after four weeks.

Employer Access to Employee and Applicant Personal Accounts (HB 318, SB 118 and HB 451) **KILLED**

These bills would have created the most aggressive privacy legislation in the nation which would prohibit an employer from accessing accounts utilized on company equipment when there is a suspicion of conduct that is against company policy or criminal in nature. A compromise was developed, but as the legislation came to the House floor an amendment was added that stripped all the compromise language. TAB will continue to support legislation that balances employer and employee rights.

Limiting Liability of Persons who Employ Certain License Holders with Criminal Convictions

(HB 1188) **PASSED**

This bill tightens up on standards for proving negligent hiring and supervision of employees with prior convictions. The law prevents employers from being sued for negligently hiring or failing to adequately supervise an employee based on evidence that the employee has been convicted of an offense.

Mandatory Time Off for Employees to Participate in School Activities of Children (HB 1369, SB 1895) **KILLED**

This bill would have required employers to allow employees an allotted amount of time off of work to meet with their child's teacher or participate in school activities. Employers should have the flexibility to decide how leave should be utilized without government intervention.

Minimum Wage (HB 276) **KILLED**

This bill would have changed the minimum wage in Texas to \$7.75 an hour or the federal minimum wage whichever is higher.

Recovery of Fraudulently Obtained Unemployment Benefits

(SB 658) **PASSED**

This bill allows the garnishment of wages for the collection of fraud-based overpayments and taxes owed to the state. It would create a 15 percent penalty on willful fraud with the penalties being deposited into the UI Trust Fund.

Unlawful Employment Practices

(HB 3323) **KILLED**

This bill would have allowed for both statutory and tort claims to be brought against an employer for the same unlawful conduct.

Unemployment Insurance (UI) Work Search Requirements (SB 920) PASSED

This bill requires that an individual be actively seeking work to be eligible for UI benefits.

Wage Claim Filing Periods (SB 741 and HB 494) KILLED

This bill would have expanded the time period an employee may file a claim for unpaid wage with the Texas Workforce Commission.

LOSSES**Waiting Week for Unemployment Insurance Benefits (HB 3565) DIED**

This bill would have repealed the waiting week and made it payable upon exhaustion of benefits or finding employment. This would shift the incentive to finding employment rather than waiting to the fourth week to qualify for the waiting week benefit.

DRAW**Worker Misclassification (HB 2015) PASSED**

This bill allows the Texas Workforce Commission to impose an additional fine of \$200 for each misclassified contractor and subcontractor receiving governmental contracts. Currently employers pay all back taxes with interest for any misclassification.



WINS

Greenhouse Gas Permitting Authority (HB 788) PASSED

Although TAB continues to support the legal challenges of the Texas Attorney General to EPA's implementation of greenhouse gas regulation under the federal Clean Air Act, it is essential for Texas businesses that the Texas Commission on Environmental Quality (TCEQ) be able to issue permits that authorize greenhouse gas emissions. HB 788 allows TCEQ to request permission from the Environmental Protection Agency to adopt a regulatory program that would allow Texas to become the permit authority for sources of greenhouse gas emissions.

Incentives for Natural Gas Fueled Electric Generation and Capture of Carbon Dioxide for Enhanced Oil Recovery (HB 2446) PASSED

This bill expands the criteria under which certain advanced clean energy projects qualify for franchise tax preferences to provide incentives to natural gas fueled generation. The bill will ensure that as the electric generation market turns increasingly to low-cost natural gas, that incentives are available to provide the benefits of carbon capture for enhanced oil recovery that is dependent on carbon dioxide availability.

Property Assessments to Fund Energy and Water Conservation Projects (SB 385) PASSED

This bill authorizes local taxing entities and private property owners to enter into agreements under which improvements to private property that will reduce energy and water consumption can be financed through voluntary property assessments. This mechanism benefits private lending institutions, reduces cost to private property owners, reduces demand on public infrastructure and provides a viable, free-market alternative for promoting energy and water conservation.

Environmental Audit Opportunities for Prospective Purchasers (SB 1300) PASSED

This bill extends the opportunities afforded to facility operators to conduct an environmental audit and self-disclose violations without risk of penalty to prospective purchasers of property who are performing due diligence in the course of acquisition.

Authorized Use of the Texas Emission Reduction Plan Fund (SB 1727) PASSED

This bill expands the uses that are authorized from the Texas Emission Reduction Plan (TERP) fund in order to achieve additional emission reductions in air quality non-attainment areas and make more productive use of those revenues for the purposes for which the fund was created.

Expedited Processing for Priority Air Quality Permit Applications (SB 1756) PASSED

This bill authorizes an applicant for an air quality permit for a project with economic benefits to the state to request expedited processing of the application and pay a surcharge to offset additional agency costs incurred by TCEQ.

Fees on Commercial Injection of Oil and Gas Waste (HB 379) KILLED

This bill would have imposed an additional fee on each barrel of oil and gas waste disposed of in a commercial injection well. Current sources of revenue paid by the oil and gas industry already generate sufficient revenues to fund Railroad Commission operations.

Mandatory Recycling of Television and Computer Equipment (HB 1346) KILLED

This bill would have allowed consumers to send used television and computer equipment to retailers and other facilities and required those retailers and facilities to accommodate the receipt of the equipment, advertise their obligations to receive the equipment and bear the costs and liabilities of receipt, storage, shipment and recordkeeping to ensure the legal recycling or reuse of the equipment.

Mandatory Recycling of Beverage Containers (HB 1473/SB 645) KILLED

This bill would have established a mandatory, state wide program for recycling of beverage containers. Under this program a distributor would charge a retailer for each qualified metal, glass or plastic beverage container sold and the retailer would pass that cost on to consumers as a separate charge.

Prohibition on Disposal of Computer Equipment (HB 1694) KILLED

This bill would have prohibited the landfill disposal or incineration of computer equipment and impose a criminal penalty for each item of equipment disposed. It is TAB's position that criminalizing such use of private property is not only bad public policy but also encourages illegal disposal.

LOSSES

Regulatory Analysis of Proposed Environmental Rules

(HB 147/SB 467) **DIED**

This bill would have improved the regulatory process at TCEQ by requiring a more detailed and enhanced analysis of proposed environmental regulations proposed by the agency which would provide needed information to businesses affected by the rules.

Environmental Compliance History

(HB 1714) **DIED**

Provisions put into law in the TCEQ Sunset legislation of 2001 aimed at strengthening the use of compliance information in permitting and enforcement actions at TCEQ have proven to be well-intentioned but ineffective, complex and extremely costly. This bill would have repealed those provisions and replaced them with simple, more flexible, but effective, requirements that would still ensure that TCEQ can meaningfully incorporate information about past environmental performance and compliance in permitting and enforcement decisions.

Reform of Permit Requirements for Wastewater Treatment Residuals

(HB 2996) **DIED**

This bill would have amended the regulatory requirements for certain wastewater treatment processes. It would have provided additional flexibility in the definition of regulated materials and repealed very costly and complex contested case hearing requirements that are not appropriate for beneficial land application practices that improve soils and allow for reuse of water resources and exceed existing federal requirements.

Authority of the Attorney General to Settle Environmental Suits (HB 3117)

DIED

This bill would have addressed cases in which local governments bring suit against companies for environmental violations seeking penalties in excess of those that are established under state policy. Some local governments have acted under their delegated enforcement authority to seek penalties even in cases that the TCEQ has already resolved. The bill would allow the Attorney General, who is a statutory party to these cases, to accept settlement offers that are consistent with state agency policies and regulations adopted under state law.

Contingency Fee Contracts in Local Environmental Enforcement Actions (HB 3119) **DIED**

Companies that purchase other companies or assets often risk acquisition of environmental liabilities for previous actions they had no role in conducting. Some local governments are bringing suit against businesses for environmental contamination that has already been addressed or is being addressed by the state and contracting with outside law firms to seek settlements solely for penalty payments which are divided on a contingency basis. This bill would have prohibited the use of contingency fee contracts where the local government shares whatever penalties a private law firm is able to recover.

Texas Railroad Commission Sunset (SB 212) **DIED**

For the second consecutive session, the Legislature failed to enact a comprehensive Railroad Commission Sunset bill. SB 212 passed the Senate, but was never reported from the House Energy Committee, while a substitute to the House companion, HB 2166, was reported from the Energy Committee, but never debated on the House floor. The agency was continued for four years until 2015, but will now be responsible for reimbursing Sunset Commission for the costs of the third Sunset review.

Reform of the Contested Case Hearing Process

(SB 957) **DIED**

A priority for TAB in the 83rd Legislature was reform of the contested case hearing process for environmental permits at TCEQ. The current process is extremely prejudiced against applicants, subject to abuse by protestors, far too costly and time consuming and is costing the state of Texas in terms of lost capital investment and job growth as companies look to other venues to avoid an inefficient and unpredictable permit process. SB 957 offered a reasonable compromise between the interests of applicants and public interests.



WINS

Corporate Practice of Medicine Prohibition Repealed for Nacogdoches County (HB 1247) PASSED

This bill will allow the Nacogdoches hospital district to directly employ physicians, dentists and other health care providers.

Health Benefit Mandates (HB 3227 and HB 3326) KILLED

These bills would have imposed additional health benefit mandates on health insurance carriers for things such as eating disorders and for self-inflicted injuries, all at a cost to the purchasers of private insurance. Health benefit mandates are statutory requirements that force health plans to provide coverage for specific services and conditions, and/or allow patients to utilize specific types of providers. These mandates can dramatically increase health care costs, which are then passed down by the health insurance carriers to businesses through increased insurance premiums.

Abolishment of the Texas Health Insurance Pool (SB 1367) PASSED

This bill abolishes the Texas Health Insurance Pool (formerly the Texas Risk Pool). Risk Pools in general are very expensive both in terms of the premium charged individuals and the taxes or assessments required to fund these programs. Specifically, in order to pay for a beneficiaries medical care, the premiums charged in a State sponsored pool are higher than those charged for coverage of healthy individuals in the individual market--up to 200% of the standard commercial rate for equivalent coverage. With guarantee issue coverage mandated under the federal health care law, there will no longer be any public benefit in maintaining a Risk Pool in our state. Enrollees in the Risk Poll will simply transition into commercial insurance coverage.

Changing the Definition of Small Employer (SB 1332) PASSED

This bill mitigates the impact of the Federal Affordable Health Care Act for the small employer market for the Years of 2014 and 2015 by re-defining the definition of the small employer market to be 1-50. On Jan. 1, 2014, the Affordable Care Act (ACA) requires health insurance issuers to comply with a new rating requirement generally known as "modified community rating" for plans issued to the individual and small employer group markets. Today in Texas, small employer group plans are permitted to vary rates by as much as 6 or 7 to 1 by applying different rating characteristics. Along with that, the ACA re-defines the small employer group market to be employers with 1-100 "full time equivalent" employees (FTEs), calculated using a new formula that requires proportional adjustment which will recognize part time employees. The combination of these two new, separate requirements for the small employer group market likely will result in significantly higher rates for all or most small employer group plans. The objective of SB 1332 would be that groups with more than 50 employees will retain their status as "large employer" groups and will not be subjected to the new rate compression requirements.

Delegation of Prescriptive Authority to Certain Providers (SB 406) PASSED

This bill reduces regulations in health care for registered nurses and physicians assistants. This reduction in regulation would increase access to care for Texas employees.

Physician Loan Repayment (HB 2550) PASSED

The bill allows the Higher Education Coordinating Board to administer the Resident Physician Expansion Grant Program as a competitive grant program to encourage the creation of new graduate medical education positions through community collaboration and innovative funding. The board shall award grants to physician residency programs at teaching hospitals and other appropriate health care entities.

Election and Qualifications of the Commissioner of Insurance (HB 682) **DIED**

This bill would have required that the Commissioner of Insurance in Texas be an elected position. Each state has an insurance commissioner who oversees the regulation of the insurance industry in that state. Most commissioners are appointed by the state governor, and only eleven insurance regulators are currently selected by the public. A common-myth is that all insurance rates are lower in states with an Elected Commissioner. This is not a true statement, as homeowners insurance in states with an elected official pay 6.2 percent more for residential property coverage than those in states with an appointed official.

LOSSES

Telemedicine (HB 1806) **DIED**

This bill would have increased access to quality health care for citizens by allowing the use of telecommunications technology for patient assessment, diagnosis, consultation or treatment.

Health Insurance Mandates (HB 2929 and HB 3276) **PASSED**

These bills will increase health insurance premiums for employers by requiring health insurance carriers to expand their coverage of benefits, all at a price to employers. The costs incurred are passed down by health insurance carriers to businesses, including small employers. Employers ultimately pay the high price for mandated health care benefits through higher insurance premiums, co-pays, reduced wages, or benefit reductions.

Prohibiting the Freedom to Contract (SB 632) **PASSED**

This bill will have a direct, negative impact on the quality of health insurance products that employers are able to offer their employees because it prohibits insurers from contracting on behalf of employers for non-covered services with an optometrist.



WINS

Transfer of Oil and Gas Production Tax Revenue to the State Highway Fund and Debt Reduction

(SJR 1 and HB 1, 3rd Called Session)

PASSED

After failing to pass significant transportation funding measures in the 83rd Regular Session, SJR 1 was finally enacted in the Third Special Session. This bill authorizes an amendment to the Texas Constitution that will revise the allocation of certain oil and gas production taxes to provide that one-half of that revenue that is currently deposited to the Economic Stabilization Fund (ESF) will instead be transferred to the State Highway Fund (Fund 6). The bill provides that the transfer to Fund 6 may be reduced in order to maintain a minimum balance in the ESF as defined by the Legislature. Revenues transferred to Fund 6 may be used for constructing, maintaining and acquiring right-of-way for public roads other than toll roads. The increase in funding for Fund 6 is estimated to be approximately \$879 million in 2015 and over \$1.1 billion by 2018. The proposed constitutional amendment will be on the ballot in the general election of November 4, 2014.

HB 1 is the enabling legislation for the constitutional amendment authorized in SJR 1. The bill establishes the process under which a select legislative committee will determine the balance to be maintained in the ESF in conjunction with the provisions of SJR 1 which authorize a reduction in the transfer of oil and gas production taxes to Fund 6 if required to maintain the defined ESF balance. The select committee will also review and make recommendations regarding long term transportation funding in Texas and the uses and management of the ESF. In addition, the bill authorized the use of the Mobility Fund to support transportation projects at port facilities.

Funding for County Road Improvements *(HB 1025/HB 2300/HB 2741/SB 1747)* **PASSED**

Taken together these bills provide some additional tools for financing local transportation projects in areas impacted by energy development. HB 2741 addresses the regulation of vehicles by counties and the Texas Department of Motor Vehicles (TxDMV) and provides additional revenues through restructured penalties for overweight truck violations. HB 2300 and SB 1747 address the authority of counties to establish county energy transportation reinvestment zones to alleviate degradation to transportation infrastructure caused by energy exploration and production. HB 1025 makes up to \$450 million in additional funding available for grants based on the passage of HB 2741 and SB 1747.

Delegation of Environmental Review for Transportation Projects *(SB 466)* **PASSED**

This bill authorizes TxDOT to enter into agreements with the US DOT in order to assume responsibility for fulfilling the obligations of federal agencies for environmental and other program area reviews under the National Environmental Policy Act or other federal environmental laws. Delegation of this authority will enable TxDOT to prioritize environmental review of transportation projects, streamline the process and avoid costly delays.

Funding for the Department of Motor Vehicles *(HB 2202)* **PASSED**

This bill will address the ongoing issue of diversions of transportation funds to other uses and improve the transparency in budgeting within TxDOT and TxDMV. Although the TxDMV was established as a separate agency in 2009 and the programs for regulation of motor vehicles moved from TxDOT, the funding for the agencies continued to be combined within the State Highway Fund (Fund 6). This bill establishes a TxDMV fund that is separate from the Fund 6 and clearly divides the revenues that support TxDMV from those that are available for support of transportation programs. The bill will also make available up to \$59 million in dedicated revenues for TxDMV that have previously been unexpended and which can mitigate any need for future fee increases for support of vehicle regulation programs.

Funding Alternatives for Texas Ports (SB 971) PASSED

This bill provides additional funding alternatives for needed improvements at Texas port facilities. The bill adds port projects to those transportation projects that can be funded through tax increment financing and authorizes port authorities to designate and administer transportation reinvestment zones to finance port projects through the recovery of the value added by the projects.

Comprehensive Development Agreements for Transportation Projects (SB 1730) PASSED

This bill extends the authority for TxDOT to use a comprehensive development agreement (CDA) with private entities in developing transportation projects and makes certain needed improvements in the CDA process. The bill authorizes the use of CDAs for nontolled state highway projects and for the reconstruction of a state highway, updates the list of projects statewide for which CDAs may be used, authorizes the combination of multiple projects that may be covered under a CDA and provides that a CDA agreement must include terms and conditions under which a project sponsor may terminate the agreement and purchase the interests of a private participant in the CDA.

LOSSES

Funding for State Transportation Infrastructure (HB 3664) DIED

Although some steps were taken in both the 83rd Regular Session and the 3rd Called Session to improve the ability to fund certain transportation projects, the major issue of significant shortfalls in transportation funding in Texas were not completely addressed. HB 3664 would have increased vehicle registration fees by \$30 and dedicate one-third of the increased revenue to paying off bonds previously issued to finance transportation projects and reduce public debt with the remainder to be allocated to non-tolled transportation projects.

Fees and Tax Revenues for the State Highway Fund (HB 3157/HJR 136) DIED

This bill would have addressed the critical funding needs for transportation infrastructure in Texas by providing for the adjustment of various fees and taxes and changes in the allocation of revenues between the foundation school program, the state highway fund and the general revenue fund.



WINS

Approved Doctor List

(HB 3867) KILLED

This bill would have allowed bad doctors who were removed from the Approved Doctors List for Workers' Compensation to be reinstated. The Approved Doctors list was abolished during the 2005 legislative session. While Texas no longer has an Approved Doctors List, Texas law prevents any provider who was removed from the list to be reinstated. This bill has been considered in past two legislative sessions.

Designated Doctor Exam/Disputes

(HB 3022) KILLED

This bill would have created additional unnecessary steps for carrier disputes of treating doctor examinations to define compensable injury. The bill would have added no rights or benefits to the injured employee; it only would have made the process more onerous. The bill would have subjected the injured employee to a designated doctor exam whether or not he or she would have otherwise requested one. The claimant already has the right to request a designated doctor examination or a benefit review conference at their discretion.

Expert Witness Reports

(HB 2660) KILLED

This bill would have changed Texas' approach to dispute resolution. Texas' approach has always been to reduce formality so that parties are not compelled to hire legal counsel to navigate the complicated legal landscape. Timely exchanged expert reports are always admissible. The absence of certain information in the report goes to the weight of the evidence and not to its admissibility.

In addition, this bill would have required parties to have witnesses write "expert reports" in circumstances where no written report was previously needed.

Mandatory Workers' Compensation for the Construction Industry

(HB 475, SB 740) KILLED

These bills would have required building contractors and subcontractors to provide workers' compensation insurance to their employees. Texas law allows private employers to "nonsubscribe" from the state workers' compensation system and many choose to provide

medical and wage replacement benefits to their injured workers through alternative occupational injury plans. The choice to nonsubscribe has been available since the first workers' compensation laws were adopted in 1913. Texas is often referred to as the only state that allows employers to elect whether to provide coverage, however a 2009 report by the United States Chamber of Commerce indicates that approximately 30 states provide employers some form of an opt-out option from the state's workers' compensation laws.

Maximum Medical Improvement

(HB 2726) KILLED

This bill would have allowed claimants and carriers to delay resolution of MMI/IR disputes indefinitely. This would have encouraged the filing of disputes on all initial certifications of MMI/IR without regard to whether or not there is a bona fide dispute. Parties would have everything to gain and nothing to lose by filing a dispute. This would have been inconsistent with the system goals made part of the HB 7 (2005) reforms as found in Labor Code Section 402.021(b) including subsection (5) which mandates that the state must..."minimize the likelihood of disputes and resolve them promptly and fairly when identified."

The dispute resolution process gives parties plenty of time to prepare for a contested case hearing on MMI/IR issues. Parties should not be allowed to delay the resolution of these issues for potentially years. In that period of time, the claimant's medical condition may worsen due to medical reasons unrelated to the compensable on the job injury. This would complicate the proper resolution of those issues and potentially delay the delivery of appropriate benefits.

Nonsubscription Requirements

(HB 3310) KILLED

This bill would have required nonsubscribers to obtain life insurance coverage for each employee with a death benefit of not less than \$200,000. The flexibility of nonsubscription for employers to choose a benefit package that is best for their company is one of the many reasons that occupational injury plans have been a valuable choice for Texas employers. Any attempts to mandate criteria for nonsubscription would have a negative impact on the companies and their employees who choose to provide its own injury plan.

Prescription Drug Monitoring (SB 1643) PASSED

Although this bill is not unique to workers' compensation, it is good step forward in getting a handle on the misuse of prescription drugs. Specifically the bill creates a task force to study the effectiveness of prescription monitoring and to make recommendations to improve the program.

Temporary Employment Service Companies (HB 1762) PASSED

This bill clarifies a hazy area of the law to establish that if a temporary employment service company carries workers' compensation insurance the protections that the employment service company receives are also extended to the client company. It specifically amends Chapter 93 of the Texas Labor Code to state that the client of the temporary service company is also subject to certain provisions of the Texas Workers' Compensation Act relating to an employee's election to waive or retain the right of action to recover damages for injuries or death sustained in the course and scope of employment.

Venue for Benefit Disputes (HB 2727) KILLED

This bill would have changed the venue for medical necessity to a local district court versus Travis County. This issue was fully vetted by the Texas Sunset Commission prior to the 82nd Legislative Session and attempts to add the venue change to the Sunset Bill of the Division of the Workers' Compensation System failed. This bill would have undermined the effectiveness of substantial evidence review. Changing venue would have resulted in different interpretations and applications of the law from local courts with little or no experience with substantial evidence. The Travis County courts have an abundance of experience with review of agency decisions under substantial evidence. In fact, the local rules in Travis County specifically address substantial evidence review.

LOSSES

Suspension of payment of certain income benefits (HB 1155) DIED

This legislation would have allowed a carrier to suspend benefits if an injured worker fails to submit to a designated doctor exam. TAB believes that this would have encouraged workers to submit to the necessary exam while also allowing the injured worker the protection of his or her benefits for good cause.

Insurance Carrier and Employer Communications (HB 1468) DIED

This bill would have allowed the policyholder/employer to have confidential communications with the insurance carrier in order to exercise the employer's statutory rights and policy obligations to provide information for the investigation of its workers' compensation claims. This is most applicable to small and medium-size businesses as larger businesses are self-insured and thus this bill does not apply to them. In 2012, the Texas Supreme Court issued *In RE: XL Specialty Ins. Co., et al.*, a decision which impacts the confidentiality of communications between an insured employer and its insurance carrier with regard to the handling of workers' compensation claims.

Because of this ruling, the employer now has to hire additional attorneys to ensure that communications are confidential and that the employer is involved in the resolution of the claim. This is an unnecessary added cost to Texas employers.



