

# Wrap-Up for the 85th Texas Legislature

Texas Impact presents a wrap-up of the 85th Texas Legislature -- bills that passed, bills that failed to pass, and bills that were vetoed by the Governor. Texas Impact's work during the 85th Texas Legislature was informed by our consensus 2017 Texas Impact Legislative Priorities.

Civic Participation & Open Government | Criminal Justice | Education | Family Security | Financial Services  
| Fiscal Policy | Food Security | Foster Care | Health/Mental Health | Immigration and Refugees | Natural Resources and Energy | Religious Freedom

## Civic Participation

Several bills to increase voter participation failed this session. HB 199 by Rep. Bernal would have uncapped the limit on the number of counties that could participate in countywide polling. HB 209 by Rep. Canales and HB 260 by Rep. Eric Johnson would have made it easier for high school students and prisoners, respectively, to register to vote. The governor did sign HB 658 by Rep. Bernal, a bill that will give disabled voters priority over other voters at the polls, allowing them to skip lengthy lines.

Before last session, the Texas Supreme Court restricted what constitutes public information in two court cases reducing transparency in state contracting. Despite passing the Senate, bipartisan bills by Senator Watson and Rep. Capriglione that would have reversed those decisions and restored the law died in the House Committee on Government Transparency and Operations. Additionally, HB 2783 by Rep. Smithee, which would have prevented governments from using the cost of litigation as a tactic to prevent the release of otherwise public information, was vetoed by Governor Abbott.

## Criminal Justice

Advocates prioritized SB 1849 by Senator Whitmire, the Sandra Bland Act, named for a woman who was arrested following a traffic stop and subsequently died in jail. Rep. Coleman's original companion bill included provisions that would have regulated racial profiling and provided counseling of police officers who had racially profiled, but it stalled in committee. The Senate companion bill did finally pass after provisions that the law enforcement community objected to were removed from the bill. The compromise does include important mental health and jail reform provisions such as diversions for people with mental health or substance abuse issues toward treatment instead of county jails.

Legislators made progress addressing the nexus of mental health and criminal justice. The legislature passed SB 292 by Senator Huffman, which will create a grant program for counties to address the mental health issues of formerly incarcerated individuals to help reduce recidivism. Additionally, the Legislature passed HB 337 by Collier, a bill that will ensure the continuous eligibility for Medicaid of an individual who has been released from jail or prison. Individuals receiving mental health treatment while locked up often experience a disruption in that treatment upon release due to the bureaucracy of reapplying for Medicaid which often leads to recidivism. HB 337 by Rep. Collier will address this by suspending an individual's Medicaid benefits rather than terminating them, and then reinstating those benefits 48 hours after their release.

SB 30 by Senator West will provide educational materials for public school students on how to interact with police officers. The legislation, effective September 1st, also includes training for police officers on civilian interaction. The increased education and training is intended to lessen tensions and anxieties that may arise during civilian and police interaction.

HB 1314 by Rep. Israel would have allowed pregnant inmates to be released on a personal bond. HB 3080 by Rep. Rose would have exempted individuals with a severe mental illness from the death penalty. HB 3054 by Rep. Herrero would have informed jurors as to the effect of their sentencing decisions in capital cases. All three bills failed to pass this session.

Two bills that would have had a significant impact on our state's fiscal policy failed to pass during the regular session. Currently, an 8 percent increase in local property taxes triggers a "rollback election" on the new rate. SB 2 by Senator Bettencourt sought to lower that rollback rate from 8% to 5%. Counties, school boards, and hospital districts opposed the measure that would have limited the amount of revenue they could generate to pay for essential services like schools, fire departments, and law enforcement. Opponents of the legislation also said that lowering the rollback rate would not fix the larger problem of state elected officials refusing to fund things like public education, preferring instead to push the question of whether something needs more money to local elected officials. SB 2 passed the Senate, but failed to pass the House. Governor Abbott has indicated that debate on the issue will be on his call for the special session starting July 18, 2017. HB 28 by Rep. Bonnen, a bill that would have phased out the state's franchise tax (a tax on business that provides billions in funding for public schools), passed in the House, but failed to pass in the Senate.

### Foster Care

During Governor Abbott's State of the State address in January, he made reforming Texas's foster care system an emergency item. In December of 2015, a federal judge ruled that the state was violating the constitutional rights of children in the state's custody where rape and abuse are "the norm." On May 31st, the governor signed four major foster care bills into law. HB 4 lowers financial barriers to kinship care for foster children. HB 5 mandates that the Department of Family Protective Services is a separate entity from the Department of Health and Human Services in order to improve efficiency and response time to abuses. SB 11 creates a community based model where the state contracts with private organizations, and HB 7 will require DFPS to spend more time evaluating risk and weighing the best interest of the child.

In addition to the four omnibus bills that passed, the state budget will provide \$508 million in additional spending. Of the \$508 million, around \$88 million will hire nearly 600 new caseworkers in addition to the 800 authorized before session began; \$85.4 million will enhance foster care provider rates to address the shortage of placements; and \$32.5 million will provide for kinship care, which keeps kids with family members and out of state custody. The Legislature also passed HB 249 by Hernandez, which will create a uniform definition of abuse and neglect and eliminate the weaker definition of abuse and neglect that is applied to providers. HB 1549 by Burkett will address prevention and early intervention services to reduce the need for removals. Unfortunately, however, the Senate Health and Human Services Committee killed HB 132 by Minjarez, which provided a one-time TANF payment of less than \$1,000 to family members under the age of 45 that agreed to take children in kinship care to offset the initial cost of taking on a new dependent.

### Food Security

For many children, the only meal they receive is at school. When combined with the existing school breakfast and lunch programs, SB 725 by Senator Miles will help to feed after school the 1.9 million students in this state who are listed as "food insecure." Prior to SB 725, state law prohibited schools from giving leftover, unopened food to their own students to take home. SB 725 prevents this waste by allowing schools to redistribute unopened food to their own students.

Another bill, HB 2159 by Rep. Giddings, would have prevented "lunch shaming" of students who run out of money in their lunch accounts by creating a grace period. However, after the twelve members of the Freedom Caucus used a procedural maneuver to kill over 100 non-controversial bills on the local and consent calendar in retaliation for lacking the votes to bring ultra conservative legislation to the floor, an overwhelming majority of the Texas House worked to revive the legislation. However, rather than merely being collateral damage in the Freedom Caucus's indiscriminate vendetta, each time the bill was revived, the most extreme twelve members of the Texas House waged a quixotic crusade against it. Eventually, with help from Senator Kolkhorst, Rep. Giddings was able to attach parts of her original bill to SB 1566.

## Education

HB 21, Rep. Huberty's school finance reform bill, failed to pass this session. When it left the House, HB 21 would have provided for \$1.9 billion for public schools, every school district would have received more money, and school finance formulas used to allocate funds to school districts would have been updated. However, the Senate reduced the funding for public schools by nearly 75 percent to \$500 million, and added a voucher program to divert money from public schools to subsidize unaccountable private schools. The House voted three times against vouchers, and the Senate refused to remove the privatization provision or add more money to public schools. HB 21 died in conference committee.

SB 3, Senator Taylor's comprehensive voucher legislation that would have established a statewide voucher program, narrowly passed the Senate after being substantially narrowed. In order to obtain the nineteen votes necessary to bring the bill to the floor, the Lt. Governor was forced to carve out certain rural districts to obtain the votes of certain rural Senators. After a 19-12 vote to bring the bill to the floor, SB 3 passed the Senate 18-13. SB 3 was referred to the House Public Education committee, but it did not receive a hearing.

## Family Security

HB 29 by Rep. Senfronia Thompson is an omnibus human trafficking bill that will codify eleven recommendations of the Texas Human Trafficking Task Force created in 2009. Some of those recommendations include mandating signage in the bathrooms of sexually oriented businesses for the human trafficking hotline, increasing resources for enforcement, and requiring commercial driving training classes to include training on the recognition and prevention of human trafficking.

HB 4102 by Rep. Neave will crowdfund money to clear the backlog of untested rape kits housed by the state. SB 256 by Senator Van Taylor protects the personal information of victims of family violence and sexual assault. SB 2039 by Senator Zaffirini requires school districts to develop an instructional module for school health curriculum's to include information on the different forms of sexual abuse, sex trafficking, and avoiding high risk activities as an attempt at early intervention. All three bills will become law. HB 1342 by Rep. Tan Parker would have provided more comprehensive sexual abuse prevention training to children in schools, however, Governor Abbott vetoed it because a parental opt-out provision was not included. Child advocates oppose a parent opt-out because the sexual abuser often is a parent.

## Financial Services

In an effort to reduce the demand for payday loans by encouraging people to deposit money in a savings account, HJR 37 by Rep. Eric Johnson proposes a constitutional amendment that would allow banks, credit unions, and other financial institutions to implement a raffle or a "prize-linked savings" program (PLS). Like a lottery but without the risk, whenever an individual makes a monthly deposit, the financial institution enters the person into a monthly drawing where that person is eligible to win a cash reward. Governor Abbott vetoed a similar bill last session arguing that such a program was gambling and would require a constitutional amendment. The public will be able to vote on the amendment at an election on November 7, 2017.

Efforts to reform payday and auto title loans failed again this session. However, efforts to nullify local city ordinances regulating short term consumer loans also failed to pass. Frustrated that reform efforts never came out of committee, Rep. Craddick brought a floor amendment to create a floor debate about payday lending. Legislators friendly to payday lenders quickly moved to gut his amendment creating the first record vote on payday lending in the House since the 2011 session. After prevailing on a vote of 74-64, Rep. Craddick withdrew his gutted amendment.

## Health/Mental Health

Texas Impact spent much of the 2017 regular legislative session monitoring and updating our members on federal legislation like the American Health Care Act that has the potential to gut the federal Medicaid, raise premiums, nullify protections and regulations, and provide large tax cuts for the super wealthy. With the uncertainty in Washington, legislators opted to wait on the federal government. For instance, SB 1376 would have created a study of block grants in the state, but it failed to pass. The one exception was in the area of mental health. HB 10 by Price is omnibus legislation that will address access to and benefits for mental health conditions and substance use disorders. Legislators did pass small bills not contingent upon federal funding. For instance, SB 507 by Senator Hancock will address issues related to “balance billing” or the practice of hospitals sending a surprise bill to a patient when one of the doctors is not in the network of the insurer. A patient in need of medical care is in no position to negotiate what is really a fight between well-resourced hospitals and insurance companies.

Bills relating to maternal mortality rates hit rocky waters for reasons unrelated to the policy merits. For instance, both HB 1158 by Rep. Sarah Davis and HB 2403 by Rep. Thierry died when the twelve member Freedom Caucus spitefully killed every bill on the non-controversial Local and Consent Calendar, which was ironically dubbed the “Mother’s Day Massacre.” HB 1158 caught a ride on HB 2466, also by Rep. Davis, a bill relating to post-partum depression. HB 2403 was not able to be revived. Later in the session, Lt. Governor Patrick killed SB 1929 by Senator Kolkhorst because the House attached must-pass sunset language for the Texas Medical Board. The Lt. Governor held SB 1929 hostage to try to force the House to pass discriminatory bathroom legislation. When the House refused, the Lt. Governor refused to let it pass in order to force Governor Abbott to call a special session where political pressure could be applied to add items like “bathrooms” to the call.

Two bills that also failed to pass were HB 1415 and HB 3151. HB 1415 by Rep. Klick would have increased access to primary healthcare by allowing advanced practice registered nurses (APRN) to practice without having to pay extremely costly fees to a supervising physician. The bill, however, was left pending in the House Committee on Public Health. HB 3151 by Rep. Sheffield would have streamlined burdensome application procedures by getting all the children in a household on the same date for renewal of the Children’s Health Insurance Program (CHIP); however, the Senate Committee on Health and Human Services refused to give the bill a hearing.

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## Immigration and Refugees

One of the most controversial and publicized pieces of legislation this session was the anti-sanctuary cities legislation, SB 4 by Senator Perry. The bill sparked wide opposition during the legislative process, protests after the bill was signed into law, and is now the subject of multiple lawsuits against the state. After the Senate passed a draconian bill for partisan primary purposes, the House was expected to pass a more workable bill that only applied after law enforcement made an arrest. However, the House Freedom Caucus proposed a controversial amendment that went back to the Senate language of inquiring at the point of lawful detention that passed 81-64. Advocates have since dubbed SB 4 a “show me your papers” law because being lawfully detained can be as minimal an encounter with law enforcement as a traffic stop, being a witness to a crime, or a pat down after setting off the metal detector at the Capitol.

SB 1018 by Senator Hughes would have licensed privately owned immigrant detention centers as “child care facilities.” Federal courts have limited the amount of time that detention centers may hold families, including women and children, who cross the border unless those facilities are licensed as child care facilities by the state. This legislation would have allowed private prison companies to obtain a license as a “child care facility” in order to detain people longer and receive more money from their contract with the federal government. The bill passed the Senate, but failed to pass the House this session.

The Legislature did very little affecting refugees in the state. SB 260 by Senator Huffines would have removed now superfluous language in statute that pertains to the state’s participation in the federal refugee program that Governor Abbott removed the state from last year, but the bill died in the House State Affairs Committee. HB 582 by Rep. Dale, as originally filed, would have made it difficult for refugees and other immigrants to obtain a driver’s license. Texas Impact worked with the author to clarify the language in the bill which would have made it less burdensome. The bill ran out of time in the House Calendar Committee. Anti-refugee bills like HB 2137 by Rep. Biedermann and SB 514 by Senator Hall failed to receive a hearing.

## Natural Resources and Energy

Few positive bills pertaining to natural resources and energy passed. HB 2395 by Rep. Collier and SB 1587 by Senator Garcia would have required school districts to test their water systems for lead contamination. Both measures failed, though SB 546 by Senator Kolkhorst does require State Supported Living Centers to test their water systems for lead contamination. HB 773 by Rep. Eric Johnson would have required certain state agencies to use climate science in their strategic plans, but the bill never left House State Affairs. HB 1927 would have required the State Emergency Response Commission to maintain an alert system for toxic chemical release emergencies utilizing text messaging, emails, social media, and other instant messaging platforms. HB 1874 by Rep. Rodney Anderson would have created a program for the recycling of certain household batteries that leak in landfills. Both bills failed to pass out of the House Committee on Environmental Regulation.

The governor did sign SB 1045 by Senator Estes which will reduce the public's ability to participate in certain air quality permits for major industrial facilities. Previously, affected parties could ask for a public hearing whenever an air application was first submitted, and a second opportunity once the Texas Commission on Environmental Quality assessed the application. SB 1045 combines the notices, thereby limiting the amount of public participation in the process.

SB 277 by Senator Campbell will prohibit tax subsidies and abatements for wind energy projects located within 30 miles of a military base. Proponents of the legislation stated that wind farms hinder military operations and could lead to the relocation of those bases. Opponents question whether this is actually an effort to limit the number of wind farms in the state since wind developers must already check with the Federal Aviation Administration and the Department of Defense before starting a wind project.

## Religious Freedom

SB 24 by Senator Huffman, which excludes sermons from discovery by governmental entities in civil cases, passed easily. The provisions of SB 911 by Senator Huffman were amended into HB 555 by Rep. Springer, and resolve the issue of county clerks issuing marriage licenses. Both bills were broadly agreed to by stakeholders, and protect individual religious practice without infringing the rights of others.

HB 45 by Rep. Flynn and religious freedom provisions amended onto four sunset bills started off rocky, but negotiation yielded an acceptable product. Since 2011, Texas Impact has opposed legislation purporting to stop the infiltration of foreign law—code for those paranoid about Muslims. After a 2016 Attorney General opinion affirmed the obvious—that a Texas court cannot enforce laws that violate the state or U.S. Constitution—stakeholders agreed to a bill that does not affect religious organizations, codifies current case law, and trains judges about the current law.

Periodically, every state agency in Texas undergoes “sunset review” where the agency's operations are examined, changes are recommended, and the agency's existence is reauthorized by the legislature. Often, these “sunset bills” become magnets for amendments because the subject matter is so broad. In the 85th Legislature, the Freedom Caucus attached “religious freedom” amendments to four sunset bills for the State Bar of Texas, the Texas Board of Law Examiners, the Board of Nursing, and the Board of Pharmacy. Each amendment differed from each other, and created conflicting language with the existing Texas Religious Freedom Restoration Act. Fortunately, Senator Watson was instrumental in facilitating a deal with other legislators and stakeholders, and the amendments in all four bills were made to conform with the Texas Religious Freedom Restoration Act in conference committee.

Last, HB 3859 by Rep. Frank will allow a foster care provider to opt out of any state contract requirement if it violates their religious beliefs. While the bill stipulates that an alternate provider must be found, the bill fails to require the provider to inform the state when a contract requirement has not been performed. For example, as the Attorney General's Office testified, a foster parent will be able to cite a religious reason for refusing to immunize a child. However, the provider will be under no legal duty to inform the state that a child has not been immunized so that the state can provide an alternative service. It will be up to the three year old to tell the caseworker. Furthermore, the bill will allow religious groups to discriminate against each other. While receiving taxpayer money from the state, a Christian provider will be able to refuse to work with Muslim foster parents, a Baptist provider will be able to put a Catholic foster child in a Baptist private school, and a Jewish foster parent will be able to force a Christian child to eat kosher. Texas Impact worked tirelessly throughout the legislative process to try to amend the bill, but stakeholders refused to negotiate, legislators refused to amend, and Governor Abbott signed the bill which will become effective September 1, 2017.