



2017 End of Session Report

GENERAL LEGISLATIVE OVERVIEW

The Texas Legislature concluded its most recent legislative session on May 29, 2017. Regular legislative sessions last only 140 days and occur only once every other year, so activity at the capitol is typically fast-paced and surrounded by plenty of speculation. This session was no different.

Legislators arrived in Austin in the midst of a sluggish national economy and low oil prices, facing a cloudy statewide economic forecast and a tight budget with not much room for new spending. Against this backdrop, there was tension between the Governor, the Speaker of the House, and the Lieutenant Governor regarding legislative priorities.

Governor Greg Abbott's priorities heading into session were Child Protective Services (CPS) reform, Pre-K initiatives, ethics reform, sanctuary cities, and authorizing a constitutional convention of the states. Speaker Joe Straus focused on school finance, CPS reform, mental health services, and business development. Lieutenant Governor Dan Patrick, meanwhile, laid out an ambitious agenda of thirty priorities, which included the previously mentioned items plus more contentious issues such as bathroom privacy, school choice, property tax reform, voter identification, and abortion.

After months of bickering and frustration between the House and Senate, the Legislature did manage to pass a balanced budget, enact reforms to CPS and foster care, increase resources for mental health initiatives, establish a statewide ban on sanctuary cities, and establish new voter identification requirements. They failed to reform school finance, increase education spending, cut property taxes, or regulate transgender bathroom access. They also failed to pass a procedural bill needed for the continued operation of several state agencies, including the Texas Medical Board.

As a result, and after some hesitation, the Governor has called a special session to commence on July 18th. A special session may last only 30 days and during which the Legislature is only allowed to consider subjects designated by the Governor. If Sunset Legislation is passed to allow the continued operation of the Medical Board, 19 other subjects will be added to the special session agenda. The special session subjects outlined by the Governor do not appear to directly impact property owners' associations, but there is always the chance that a policy issue could have an indirect impact on associations. For example, there was a clear message from the Governor in his legislative call against local control by cities and instead opting for state-wide regulation. Included in the subjects for a special session on this topic was restricting a city's right to regulate tree removal on private property. HB 1572 (mentioned below) could be refiled for the special session and not only limits local regulation with respect to tree removal, but extends to property owners' associations when an owner believes a tree poses a risk of fire to property. TCAA will continue to monitor the situation throughout the interim and the legislative special session.

TCAA CAPITOL ACTIVITIES

During their time in Austin, legislators filed approximately 6,800 bills and joint resolutions in the House and Senate, the second highest total in Texas history. They also submitted thousands more amendments in committee and during floor debate. Keeping track of all of that activity takes a

tremendous amount of focus and organization, and the TCAA legislative team did an exceptional job.

The TCAA Board and TCAA advocates at the capitol spent hundreds of hours this session working on behalf of community associations in Texas. They screened bills as they were filed each day, summarized and analyzed the bills relevant to community associations, discussed strategies for improving or opposing legislation, worked closely with legislators and staff, negotiated with outside stakeholders, attended legislative committee meetings, provided public testimony on troublesome bills, drafted bill amendments and talking points, monitored legislative floor debate, and kept track of amendments added to bills in the final days of the session. They did all of this on both the House and the Senate side of the capitol. Throughout the session, TCAA also provided legislative updates, summaries, and action alerts to its members and supporters.

In addition to its daily legislative work, TCAA also successfully organized the annual Capitol Rally Day on March 28, 2017. Nearly 200 attendees from Houston, Dallas, Austin, San Antonio, and communities across Texas spent the day at the capitol advocating for property owners' associations. Supporters arrived by busloads and carloads and, upon arrival at the capitol, were divided up into regional teams for the day.

The Capitol Rally Day attendees shared lunch and received an in-depth briefing from TCAA leaders, advocates, and communications staff. After lunch, the crowd gathered on the south steps of the capitol for a rally and media event, and then made their rounds to dozens of capitol offices to share their support for TCAA and community association living enjoyed by countless Texas families.

LEGISLATION THAT PASSED

The Texas Legislature filed dozens of bills that would have directly impacted community associations. Many times those bills were problematic, and TCAA worked with the bill authors and stakeholders to improve the legislation. In a few other cases, legislation passed with the continued support and assistance of TCAA. Some notable bills that passed this session include:

HB 561 (effective immediately) by Rep. Murphy, as originally drafted, established separate regulations for golf carts and utility vehicles "not designed primarily for recreational purposes," with vague language relating to the ability of master-planned communities to regulate the use of these vehicles. TCAA made significant progress improving this bill, and the bill that finally passed was narrowed to address only golf carts, all-terrain vehicles, and similar utility vehicles used to deliver mail and packages. These types of vehicles, bearing a license plate issued by the Texas Department of Motor Vehicles which contain the words "Package Delivery," may pick-up or deliver mail, parcels or packages within a community subject to a property owners' association or condominium association in a manner that complies with the rules adopted by the property owners' association or condominium association. Rules governing safety and use of these vehicles may be adopted by property owners' association or condominium association.

HB 1128 (effective 9/01/17) by Rep. Wray moved the date for foreclosure auctions, which are normally held on the first Tuesday of the month, to the first Wednesday of the month if the Tuesday falls on January 1 or July 4. Auctions held on New Year's Day and July Fourth have had predictably poor turnout and counties differ as to whether or not to hold foreclosure sales on these holidays.

SB 873 (effective immediately) by Sen. Creighton addresses overcharges related to submetering of utilities. Stakeholders have expressed concern that water billing disputes sometimes result in costly and

time-consuming litigation, the cost of which may ultimately be borne by water users through increased charges. This bill does not affect community associations directly, but requires condominium associations to reimburse a tenant for certain overcharges for utility services. An overcharge occurs when the condominium assesses extra charges over and above the actual cost for the utility plus any applicable taxes and surcharges. Under the former law, if a condominium manager failed to comply with an order of the Public Utility Commission, the manager was liable for an amount equal to three times the amount of the overcharge, a civil penalty equal to one month's rent, attorneys' fees, and court costs. Under the new system, a tenant may file a complaint with the Public Utility Commission and a condominium association found to have overcharged is subject to repayment of the amount of the overcharge and payment of any administrative penalties assessed by the commission. No longer is the manager of a condominium subject to an order requiring repayment of the overcharge or the payment of an administrative penalty.

LEGISLATION THAT DID NOT PASS

Here are summaries of some other notable bills, none of which passed, that TCAA watched closely during the legislative session:

HB 522 by Rep. Schofield related to regulation by a property owners' association of certain religious displays. The bill prevented an association from adopting or enforcing a dedicatory instrument that prohibits the display of certain religious items on the owner's property. After sharing some initial concerns, TCAA made significant progress in working with Rep. Schofield to improve this bill. Despite these efforts, the legislation died in the final days of session. TCAA expects to see a bill filed on religious displays during the 86th Legislature in 2019.

HB 923 by Rep. Shaheen related to "excessive" property owners' association fines. The bill required that fines be reasonable, and if an association imposes cumulative fines for a continuing violation, the association must establish a maximum fine amount at which point the total fine amount is capped. TCAA made significant progress improving the subjectivity of this bill before it stalled late in session.

HB 1053 by Rep. Meyer related to statutes of repose for certain claims involving the construction or repair of an improvement to real property or the attachment of equipment to real property. This bill reduced from ten years to five years the statutory period to bring a claim against a defendant after substantial completion of an improvement to real property. This legislation would have impacted suits against persons furnishing construction or repair of improvements, and also architects, engineers, interior designers, and landscape architects furnishing design, planning, or inspection of construction of improvements.

HB 1341 by Rep. Munoz related broadly to property owners' associations and imposed a civil penalty for certain behavior. The bill proposed several changes to the administration of and access to property owners' association records, communications, and meetings. The legislation allowed association members to submit requests for association records via phone or email instead of by certified mail as currently required by law. HB 1341 also expressly required associations to allow member inspection of association records related to management company employees who do work with the association. The bill required minutes of board meetings to include all communications from members relating to that meeting, including copies of emails submitted to the board for consideration at the meeting. The bill further gave any member the right to speak for up to 30 minutes at any board meeting. Finally, the legislation provided that an association is liable for up to \$25,000 for each violation of any of the above provisions or any other provision of Chapter 209 of the Property Code.

HB 1572 by Rep. Workman prohibited enforcement of any restrictions that prevent property owners from removing a tree or vegetation on their property if they believe the tree or vegetation to be a fire risk. There were some exceptions, but in most cases the right to remove trees or vegetation was based solely on the property owner's belief. TCAA worked with Rep. Workman, and the bill was extensively amended and improved, but failed to pass.

HB 2320 by Rep. Fallon attempted to restrict developer control of property owners' associations, outlining three scenarios whereby a developer would be required to hold elections and allow positions to be approved by the homeowners: (1) if a majority of the lots have been sold; (2) if 75% of the lots have been sold; or (3) if a number of lots is not mentioned in the declaration, 10 years from recordation of the declaration. The bill required that board meetings must be held within 10 miles of the subdivision for declarant-controlled boards. HB 2320 also mandated that one third of a board be elected by owners other than the declarant when a majority of lots have been sold to owners, and required that a majority of the board be elected by owners other than the declarant when 75 percent of the lots have been sold. The bill made these provisions retroactive for all associations that are subject to Chapter 209 and gave a March 1, 2018, deadline for the homeowner board member elections to be accomplished for any association governed by the bill.

SB 1228 by Sen. Menendez required a property owners' association or its architectural committee to "immediately" approve an application to repair damage to a property owner's property caused by a "weather-related event" or "naturally-occurring event" if the owner has applied to substantially restore the condition of the property as it existed immediately before the event. TCAA worked diligently to reduce the chance of litigation over the meaning of the term "immediately" by working closely with Sen. Menendez's office to include a specified deadline.

SB 1506 by Sen. Hinojosa (companion to **HB 3065** by Rep. Deshotel) primarily addressed the procedures associated with mechanic's and materialmen's liens, however, it also made an important change that would have affected condominiums and condominium owners. The proposed legislation provided that a lien for work on the common elements of a property extends to each unit owning an interest in the common elements, apportioning the lien among the units based on their interest in the common elements. This provision had the effect of directly extending the liability for a condominium association's failure to pay a contractor to the unit owners themselves.

SB 1542 by Sen. Kolkhorst related to a requirement that a condominium receive prior approval from a county prior to its creation. The bill provided that a county may require the county clerk to obtain prior approval from the county before allowing a developer to create a new condominium in the county. Though the bill gave a county discretion to disapprove the creation of a new condominium, it did not include a list of reasons or examples of why a county may disapprove a new condominium.

SB 2234 by Sen. Menendez (and House companion **HB 3528** by Rep. Vo) related to the collection of past due assessments and other charges by a property owners' association. Among its numerous provisions, SB 2234 imposed limitations on interest, late fees, collection costs, methods of payment, and attorney's fees. The bill was overly complicated and so vague as to lead to unnecessary disputes and litigation over compliance. Though it seemed aimed at protecting consumers from being overcharged, the bill also posed a potential problem in that it attempted to retroactively modify the rights and obligations of the restrictive covenants to which property owners have consented by accepting title to their property. The bill also used an owner's "understanding" as a measure of compliance with association fees and costs, meaning an owner could indefinitely keep requesting

documentation because they do not yet “understand” their account. Without an objective standard measuring when the association’s duty has been affirmatively met, there is potential for abuse. The legislation also imposed new requirements for the content and manner of delivery of a collection letter sent by an association. Any deficiency in the content of the letter would arguably form the basis for an owner’s challenge to an association’s authority to collect certain collection costs or to an association’s authority to foreclose its assessment lien. Finally, SB 2234 went on to limit what may be included in a lawsuit to collect past due assessments and capped various amounts that may be collected in such a lawsuit, removing a task historically performed by judges and placing it in the hands of the legislature to be applied with a broad brush.

The negative economic impact resulting from SB 2234 and similar well-intentioned bills could be passed onto the homeowners that the legislation attempted to protect, in the form of increased assessments or reduced amenities and services. It is likely that annual increases in assessments would be necessary to keep landscaping beautiful, maintain amenities, and protect property values. If owners are not encouraged to pay assessments timely, the natural consequence is reduced benefits that families have come to enjoy.

TCAA has a vested interest in protecting both community associations and the property owners who benefit from association membership, and looks forward to working with the Legislature in future sessions to find a sensible level of statewide regulation that benefits all parties.