



TEXAS
ASSOCIATION
OF
BUILDERS

Legislative Line



313 E. 12th St.
Ste. 210
Austin, TX 78701
(800) 252-3625
www.TexasBuilders.org



Summarizing state legislative and regulatory developments affecting housing and the building industry.

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Rally Day 2011 Recap

Rally Day 2011 was an enormous success! Nearly 1,000 builders, developers, remodelers and associate members from across the state joined the Texas Association of Builders at the Capitol on February 23 to participate in the day's events. Senator John Carona, our key speaker, enthusiastically addressed TAB members on the South Steps of the Capitol. Immediately following the Rally, TAB members and Texas legislators enjoyed BBQ on the Capitol lawn.

Throughout the day, every Senator and Representative was visited by Rally Day participants. TAB members left a folder of key issues as well as a brick emblazoned with the TAB logo with the legislators. The Capitol building swarmed with TAB members taking advantage of the opportunity to meet face to face with lawmakers and their staff. Our participants effectively informed them of the issues important to our industry and our position on specific bills.

Culminating the Rally Day events, TAB hosted a legislative reception at the historic Driskill hotel in downtown Austin. Everyone who participated in Rally Day was invited to attend, including the legislators. The reception was an enjoyable conclusion to a successful Rally Day at the Capitol!

TAB thanks all of you who took the time to have their voices heard by those who can make a difference. A special thanks to our many members who participated in our event at this pivotal time in our industry.

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82nd Legislative Session Update

GOVERNOR – Upon Senate passage of SJR 1 calling for a **federal balanced budget amendment** (details in the Senate section below), Governor Rick Perry said, “I applaud the Texas Senate for Taking this important step to reign in Washington’s out-of-control spending, which has put our country on a collision course with economic disaster. We must insist on a balanced budget amendment to the U.S. Constitution, so Washington will be required to exercise the same fiscal restraint that sensible businesses and families have long employed. I look forward to working with members of the Texas House who share the goal of a federal balanced budget amendment to put the U.S. back on the path to fiscal responsibility.”

Governor Perry announced the formation of a bipartisan **Task Force on Unfunded Mandates**, which will identify unfunded mandates that have been passed down from the state to local governments, such as cities, counties and school districts. The task force will make their recommendations to the governor on how to best alleviate burdens on local entities. Governor Rick Perry spoke at the **National Federation of Independent Business Texas Small Business Day** luncheon, where he pledged his commitment to strengthening Texas’ competitive jobs climate and renewed his call to make permanent the **small business tax cut** passed last session.

SENATE – The Senate passed **SJR 1** by Steve Ogden (R-Bryan) and Florence Shapiro (R-Plano) calling on Congress to convene a constitutional convention for the purpose of passing an amendment to the U.S. Constitution that would require a **federal balanced budget**. In laying out the bill, Senator Ogden told his Senate colleagues that a recent trip to Washington underlined the need for the bill. He spoke to several members of Congress on both sides of the aisle and found that, whether right or left, members were unwilling to consider a balanced budget amendment. He concluded that if a budget amendment is going to be considered, the states must take the lead. The resolution’s co-author Senator Florence Shapiro added that several amendments to the US Constitution have passed, not because Congress initiated the amendments but in response to the pressure they received from their states. SJR 1 passed by a vote of 24 – 7, not along party lines – 16 Republicans and 8 Democrats voted for it and three Republicans and four Democrats voted against.

Lt. Governor David Dewhurst announced the creation of a new **Senate Select Committee on Open Government**. The committee is charged to review issues relating to transparency in state government, public information and open records.

The Select Committee will focus on:

- How advances in technology have changed dissemination of information online as it relates to open records;
- Ways in which state and local governments can provide more information online so citizens have greater access to budgets, spending, and other governmental business;
- How citizen participation in public meetings and hearings can be enhanced; and
- How the emergence of various forms of social media have affected communications by and within governmental bodies.

On Wednesday, the Senate celebrated the **175th Texas Independence Day** with readings from the Texas Declaration of Independence. The original document was brought into the chamber under an honor guard from the Texian Legacy Association dressed in the period garb of the 1836 revolution.

HOUSE – Representative Burt Solomons (R-Carrollton) Chair of the House Redistricting Committee talked to the House about his plans and the **schedule for the redistricting process**. It is his goal for the House to pass the redistricting bills by the end of April. He encouraged legislators in urban counties that have more than one member per county to work together.

On Wednesday, the House had its first bill up for debate this session – **HB 15** by Sid Miller (R-Stephenville) which would require a **sonogram to be performed** on a pregnant woman between 24 and 72 hours **prior to an abortion** and require the woman to have the opportunity to view the sonogram, hear the heartbeat and receive a verbal description of the sonogram images. A point-of-order was raised and the bill ended up being sent back to the State Affairs Committee, which had a new hearing and reported it out on Wednesday night. The bill was put back on the agenda for House consideration on Thursday. After over seven hours of debate, the House passed HB 15 to third reading by a vote of 103 to 42 with one present not voting. The House is expected to give final approval to the bill on Monday.

BUDGET – Representative Jim Pitts (R-Waxahachie), Chairman of the House Appropriations Committee, and Representative John Otto (R-Dayton) filed **HB 275** to authorize the **use of \$4.27 billion from the state's Economic Stabilization Fund** (Rainy Day Fund) to **cover the shortfall in the current 2010-2011 budget**. The fund has a current balance of approximately \$8 billion and is projected to have a balance of \$9.4 billion at the end of 2013.

Chairman Jim Pitts (R-Waxahachie) sent a letter to Comptroller Susan Combs saying, “I have filed HB 275 which appropriates \$4.3 billion out of the Economic Stabilization Fund to the General Revenue Fund to cover our existing expenses and outstanding obligations. I am fully aware that passage of HB 275 will require a difficult supermajority vote by the House membership. Before I ask them to take that vote, it is important that House members have a true picture of our fiscal situation. I ask you to address the following questions so that they can make an informed decision:

- How does your certification number in May of 2009 compare to the revised estimate in January of 2011? What were the significant factors that contributed to the deficit?
- What are the specific short-term consequences of the projected budget deficit? What are the longer-term consequences? What options are available to the Legislature to minimize or eliminate those consequences? Are there specific options you would recommend?”

Comptroller Combs responded to Chairman Pitts in writing on

Wednesday saying, “When the budget for the 2010-2011 biennium was certified, fiscal 2011 was projected to close with a small surplus of \$83.5 million in General Revenue. My January 10, 2011 biennial revenue estimate shows that fiscal 2011 will close with a balance in General Revenue of negative \$4.3 billion. The most significant factor for this change was the economic recession that our state and nation are now recovering from. The severe recession had negative effects not only on employment, incomes and business conditions, but on our revenue system as well. As an illustration: My certification of the 2010-2011 budget was based, in part, on projected sales tax revenues of \$43.6 billion for the 2010-2011 biennium. One and a half years later, with a state economy battered by the recession, that revenue source is now expected to only generate \$39.8 billion for the biennium - \$3.8 billion less than originally anticipated during the current biennium. Other taxes, although smaller, were similarly hard hit by the recession. Note also that Texas lost over 4% of its payroll employment, or 431,000 jobs, before bottoming in fall 2009. These losses – as a percent – were more severe than the recession of the early 2000s, the recessions of the 1980s, and in fact more severe than any recession in our state since World War II. You asked about the consequences of the projected budget deficit for fiscal 2011. The short-term consequences of the deficit included a cash shortfall in the current year that must be addressed. Projected cash balances are insufficient to support the appropriations for the remainder of the current biennium. The options the Legislature has to address the current-year shortfall include reducing appropriations for fiscal 2011 delaying spending, appropriating other available resources such as the Rainy Day Fund or some combination of these options. Pursuant to the Constitution, I cannot certify new appropriations for the current year until the deficit is addressed. The longer-term effects of the projected shortfall for 2011 as noted in the biennial revenue estimate is that any shortfall in the current biennium will reduce revenue available for the next budget period. Consequently, efforts taken to address the ending balance in fiscal 2011 will have a direct effect on available revenue for the 2012-2013 biennium.

On Thursday, **Chairman Pitts gave introductory remarks** prior to recognizing Comptroller Combs to address the Appropriations Committee. He said, “The budget crisis is forcing this committee to make tough decisions about what the true priorities of this state should be. Part of what we are lacking is a clear description of how we arrived at this point. What our current challenges are and how we should address them. We hope the comptroller will be able to shed some light on these issues for us.” **Comptroller Susan Combs reviewed the options** the committee has in addressing the shortfall in the current biennium. In response to a question, she listed the times in the past that the legislature has used the Rainy Day Fund:

- In 1990, the Legislature used \$29 million (the entire balance of the fund)
- In 1993, the Legislature used \$125.8 million (most of the fund)
- In 1994, the Legislature used \$72 million of the \$80 million in the fund
- In 2003, the Legislature used \$1.26 billion (leaving \$365 million in the fund)

- In 2005, the Legislature used \$2.03 billion.

ECONOMIC DEVELOPMENT - On Tuesday, it was announced that **Texas won Site Selection Magazine's Governor's Cup for 2010**, which is awarded annually to the state with the most new and expanded corporate facilities announced over the year. Texas got the top spot with 424 projects, a 50-project increase over its second-place finish last year. Ohio placed second with 376 projects, followed by Louisiana (347), Pennsylvania (337) and Georgia (251).

ENERGY – Representatives John Otto (R-Dayton) and Rafael Anchia (D-Dallas) announced the filing of **HB 1037** which they are joint-authoring. It would create **incentives to encourage growth in the use of alternative fuel vehicles** by creating a program to provide funding to increase the number of fueling facilities for alternative fuel vehicles. The program would allow up to 2% of the money in the Texas Emissions Reduction Plan (TERP) to be used to offset the cost of constructing, reconstructing and acquiring these facilities.

The **House Business and Industry Committee** met on Monday and took up:

HB 362 by Burt Solomons (R-Carrollton) would prohibit a property owners' association from enforcing provisions in a dedicatory instrument that prohibits or restricts a property owner from installing a **solar energy device**. *It was left pending.*

The **Senate Intergovernmental Relations Committee** met on Wednesday, and took up:

SB 238 by Royce West (D-Dallas), **SB 302** by Jeff Wentworth (R-San Antonio) and **SB 447** by Mike Jackson (R-LaPorte) would prohibit a property owners' association from including or enforcing a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a **solar energy device**. *All three bills were left pending.*

ENVIRONMENT – The **House Energy Resources Committee** met and heard from invited witnesses on the **litigation involving the Environmental Protection Agency**. Chairman Jim Keffer (R-Eastland) announced that the Environmental Protection Agency declined to send a representative to the hearing. Texas Commission on Environmental Quality Commissioner Bryan Shaw testified that the Flexible Permit Program is working although it has received some bad press. He expressed frustration that the EPA wants to take over the Greenhouse Gases Program and so far TCEQ and the EPA have been unable to reach a compromise. Mark Vickery, Executive Director of TCEQ reported that the state implementation plan has been submitted to the EPA for approval but it has yet to be approved. He also added that in 2010, the EPA disapproved the flexible permit program. Bill Cobb, Deputy Attorney General discussed the litigation between the EPA and the State of Texas.

Senator Wendy Davis (D-Fort Worth) announced the filing of **SB 772** which would require companies drilling for natural gas to include a "tracer" fluid in the **fracturing water used in the drilling process**.

The **Senate Natural Resources Committee** met on Tuesday and took up:

SB 332 by Troy Fraser (R-Horseshoe Bay) would provide that a landowner, or the landowner's lessee or assign, would have a vested ownership interest in and right to produce **groundwater** below the surface of the landowner's real property. *It was left pending.*

SB 667 by Robert Duncan (R-Lubbock) would recognize the rights of the citizenry in the preservation and conservation of **groundwater resources** underlying the public and private lands of this state; and would provide that the recognition of these rights to not be construed to prohibit the reasonable regulation, preservation, and conservation of groundwater by a groundwater conservation district. *It was left pending.*

Next Week: The **House Natural Resources Committee** will meet on Tuesday, March 8, 2011 at 8:00a.m. in E2.010 of the capitol extension to take up:

HB 865 by Brandon Creighton (R-Houston) would allow money in the **Rural Water Assistance Fund** to be used for construction of infrastructure facilities for wholesale or retail water or sewer service, desalination projects, the purchase or lease of water well fields, property necessary for water well fields and water projects included in the state water plan or a regional water plan.

HB 1319 by Eric Johnson (D-Dallas) would require the Texas Water Development Board and the Texas Commission on Environmental Quality in consultation with the Water Conservation Advisory Council to develop a uniform **system for calculating water use** and conservation to be used by a municipality or water utility in developing water conservation plans and preparing reports.

GOVERNMENT REFORM – The **House Government Efficiency and Reform Committee** met on Thursday. The Chairman, Bill Callegari (R-Katy) commented on the **role of the committee** saying, “For over a century, the Texas Legislature has passed legislation into hundreds of chapters of law. Some of these laws have outlived their usefulness. While some laws are obsolete, others are very much alive and affect our everyday lives. Then, there are laws that regulate the types of occupations people may pursue. In fact, we have reached a point where nearly one-third of the Texas workforce is regulated by state law. These regulations require state agencies, bureaucrats, and paperwork, all at taxpayers’ eventual expense. Other laws create programs that expand the role of government. Taken together, all of these laws affect citizens’ ability to carry on with their everyday lives. The current budget crisis brings the debate over the role of government into sharp focus. I believe that this session presents the perfect opportunity to begin the discussion on what the term ‘limited government’ really means. While some programs may be cut through the budgeting process, now is the time to critically evaluate the laws that created those regulations and programs in the first place. To be blunt, at some point the role of government must be curbed to allow the decisions of businesses, families, and common sense to prevail. Texans should be allowed to carry on with their lives in the absence of government interference.” Martin Hubert, Deputy Comptroller testified on behalf of the **Council on Competitive Government** listing ways

that the comptroller's office is working to make government more efficient including the use of electronic fund transfer, a paycard program, and electronic deposits. He also explained the Texas Procurement and Support Services program that streamlines the procurement process for the purchase of goods and services. Ken Levine, Director of the **Sunset Advisory Commission** also testified. He outlined the role of the Sunset Commission in helping to create efficiency in state government.

HUMAN RESOURCES/EMPLOYMENT – The **House Business and Industry Committee** met on Monday and took up: **HB 681** by Tim Kleinschmidt (R-Lexington) would prohibit an employer from restricting an **employee from bringing a handgun into the employer's parking lot**. *It was left pending.*

The **Senate Criminal Justice Committee** met on Tuesday and took up: **SB 321** by Glenn Hegar (R-Katy) would prohibit an employer from restricting an **employee from bringing a handgun into the employer's parking lot**. *It was voted out favorably as substituted.*

The **Senate Health and Human Services Committee** also met on Tuesday and took up: **SB 355** by Rodney Ellis (D-Houston) would **prohibit smoking in places of employment**, in public places, and in the seating area at an outdoor event. *It was left pending.*

The **House Public Health Committee** met on Wednesday and took up: **HB 670** by Myra Crownover (R-Lake Dallas) would **prohibit smoking in places of employment**, in public places, and in the seating area at an outdoor event. *It was left pending.*

PROPERTY- The **House Land and Resource Management Committee** met on Monday for an organizational meeting and to hear invited testimony. Representative Tim Kleinschmidt (R-Lexington), the committee's Vice Chair presided and opened the meeting by announcing that the primary issue the committee will be responsible for this session is eminent domain. They had invited testimony from Land Commissioner Jerry Patterson who discussed the duties of his office in producing money for the Permanent School Fund and the Permanent University Fund, services for veterans, and preservation of coastal land.

The **House Insurance Committee** met to have an orientation and review of the **Texas Windstorm Insurance Association**. They heard invited testimony from Commissioner Mike Geeslin of Texas Department of Insurance who gave an overview of TWIA. Jim Oliver, General Manager at TWIA also gave background and coverage statistics on the association.

The **House Land and Resource Management Committee** met and received invited testimony on **eminent domain** and the **process of property condemnation**. Chairman Rene Oliveira (D-Brownsville) kicked off the hearing by saying that eminent domain is the most important issue the committee will consider this session. The committee heard from Agriculture Commissioner Todd Staples,

Amadeo Saenz of Texas Department of Transportation and Eric Ericksson of the Port of Houston as well as representatives of Association of Electric Companies of Texas, Texas Municipal League, Texas Oil and Gas Association, and Texas Public Policy Foundation.

Next Week: The **Senate State Affairs Committee** will meet on Monday, March 7, 2011 at 10:00a.m. in the Senate Chamber to take up: **SB 361** by Robert Duncan (R-Lubbock) would allow **parties to a construction contract** to agree upon indemnity or additional insured provisions that are not otherwise prohibited by law.

The **House Urban Affairs Committee** will meet Wednesday, March 9, 2011 at 10:30 a.m. or upon adjournment in E2.016 to hear TAB supported **HB 1388** which would prohibit a city from enforcing a tree ordinance in its extraterritorial jurisdiction. The committee posting can be viewed [here](#).

The **House Land and Resource Management Committee** will meet on Monday, March 7, 2011 at 1:00p.m. in E2.012 of the capitol extension to take up:

HB 138 by Bill Callegari (R-Katy) would change the definition of **blighted area**; would provide that an area may not be considered a blighted area unless the municipality has given notice in writing to the property owner and the property owner fails to take reasonable measures to remedy the condition; would provide that an area may not be considered a blighted area solely for aesthetic reasons; and would impose a two-year limitation on a determination of blight.

HB 188 by Ralph Sheffield (R-Temple) would add to the list of prohibited uses of **eminent domain authority** if the taking is not necessary for public use.

HB 365 by Sylvester Turner (D-Houston) would allow municipalities with a population of more than 1.9 million to use **eminent domain to take a multi-family rental building** if all lawful occupation of or construction activity for the building has ceased or reasonably appears to have ceased for more than 365 consecutive days and the taking is for the **elimination of urban blight**.

HB 1062 by Jerry Madden (R-Plano) would change the provision in eminent domain law to allow a **municipality to exercise eminent domain for a public use** (rather than a public purpose).

SB 18 by Craig Estes (R-Wichita Falls) is the **eminent domain reform** bill designated an emergency by Governor Rick Perry.

TAX – The **House Ways and Means Committee** met on Monday for an organizational meeting and to hear invited testimony. John Heleman, the Chief Revenue Estimator for the Comptroller's office discussed the **revenue estimate** and sales tax and workforce trends and predicted slow but steady growth in both sales tax revenue and employment. He also discussed franchise taxes and cigarette tax revenue. John O'Brien, Director of the Legislative Budget Board also testified. He outlined the procedure for developing **the proposed budget** which represents a 16.6% decrease over the current biennial budget, and a 10% decrease in general revenue spending. Associate Deputy Comptroller Mike Reissig talked about the **history and performance of the franchise tax**. In response to a question about

franchise tax collections being less than anticipated, he explained that part of the shortfall is due to the economic recession; however, approximately \$1.6 billion is due to inaccurate estimates because the cost of goods sold deduction has been larger than expected. Deborah Cartwright, Director of the Property Tax Division at the Comptroller's office discussed **local property tax trends**. She stated that while local entities collected around \$40 billion in property taxes, overall collections declined 1.5% in 2010.

Representative Jose Menendez (D-San Antonio) filed **HB 1597** which would **temporarily increase the state sales tax by two cents** for two years. The extra money would be exclusively dedicated to reducing the proposed \$10 billion cuts in public education. The increase would expire on September 1, 2013. Increasing the sales tax to 8 ¼ cents would raise an estimated \$6 billion in additional revenue.

The **House Ways and Means Committee** met on Monday and took up: **HB 241** by Tan Parker (R-Flower Mound) would eliminate interest owed for back taxes on **property that is converted from agricultural to non-agricultural use** if the additional taxes owed are not delinquent. *It was left pending.*

HB 252 by Harvey Hilderbran (R-Kerrville) would require **applications for a homestead exemption** to include a copy of the applicant's driver's license or state-issued personal identification certificate and a copy of the applicant's vehicle registration receipt or a utility bill in the applicant's name; and would prohibit the chief appraiser from allowing an exemption unless the address on the driver's license and receipt or utility bill matches the residence homestead. In support were representatives of Texas Association of Appraisal Districts, County Judges and Commissioners Association of Texas, and Galveston County Tax Office. *It was left pending.*

HB 654 by Burt Solomons (R-Carrollton) would require the Comptroller to report to the legislature the **amount of tax revenue** by each tax collected and **remitted to municipalities and counties**. *It was left pending.*

HB 658 by Mike Villarreal (D-San Antonio) would repeal Subchapter F of Chapter 111 of the Tax Code which allows refunds of sales taxes and franchise taxes under **economic development agreements**. *It was left pending.*

HB 717 by Doug Miller (R-New Braunfels) would increase the **board of directors for appraisal districts** from five to seven members with the two new members to be elected countywide. *It was left pending.*

On Wednesday, the **Senate Intergovernmental Relations Committee** took up:

SB 422 by Robert Duncan (R-Lubbock) would allow municipalities and counties to contract with the governing body of another taxing unit to **collect special assessments**. *It was voted out favorably.*

Representative Mike Villarreal (D-San Antonio) announced the filing of **HB 1308** which would establish a **Select Commission on Periodic Tax Preference Review** to analyze tax credits, discounts, exclusions, exemptions, refunds, special valuations, special accounting treatments, and special rates in the Tax Code.

Next Week: The **House Ways and Means Committee** will meet on Monday, March 7, 2011 at 2:00p.m. in E2.014 to take up:

HB 353 by Lon Burnam (D-Fort Worth) would put a limit of \$312.50 per year on the one-half percent **timely filer discount** for collecting sales taxes and limit the 1.25% deduction for taxpayers who pre-pay to \$3,906.25 per year.

HB 499 by Eddie Rodriguez (D-Austin) would add an additional penalty on **delinquent ad valorem taxes** to pay the costs associated with collection of the delinquent tax.

HB 590 by Senfronia Thompson (D-Houston) would authorize local taxing jurisdictions to request an independent audit review of the Comptroller's determination that **local taxes must be reallocated to another jurisdiction** if the amount of taxes the Comptroller proposes to reallocate is the lesser of \$200,000 or 10% of the tax revenue received by the local taxing jurisdiction in the previous calendar year.

HB 744 by Richard Raymond (D-Laredo) would institute a sales tax exemption for **computer equipment purchased, leased or rented by a small business** (that creates at least 25 jobs and invests at least \$10 million in capital investment) if the equipment is for the exclusive use and benefit of the business, is necessary for the operation of the business, and replaces computer equipment on which the business paid tax.

TORT – The **House Judiciary and Civil Jurisprudence Committee** met for an organizational meeting and to take invited testimony. The committee heard from Daniel Hodge, First Assistant Attorney General who explained the purpose of the **Office of the Attorney General**. Calling it the “state’s law firm” he explained that the office defends state agencies in lawsuits. Alicia Key, Director of the Attorney General’s Child Support Division explained the functions of her office. She reported that the primary purpose of her office is establishing child support claims. **Chief Justice of the Texas Supreme Court Wallace Jefferson** gave the committee background information on the courts. Cathleen Parsley, Chief Administrative Law Judge for the State Office of Administrative Hearings explained the functions of her office.

82nd Legislature Dates of Interest

Friday, March 11, 2011 (60th Day)

Deadline for filing bills and joint resolutions other than local bills, emergency appropriations and bills that have been declared an emergency by the governor.

Monday, May 30, 2011 (140th Day)

Last day of 82nd Regular Session. The Legislature adjourns Sine Die.

Sunday, June 19, 2011 (20th Day Following Final Adjournment)

Last day governor can sign or veto bills passed during the regular legislative session.

Monday, August 29, 2011 (91st Day Following Final Adjournment)

Date that bills without specific effective dates (that could not become effective immediately) become law.

Helpful Links

[Texas House of Representatives](#)

[Texas Senate](#)

To research bills of interest, visit the [Texas Legislature Online](#).



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