



Representative

Desk

LSG Floor Report—June 17, 2013

Overview of Legislation for the 1st Called Session
Of the 83rd Legislature

Overview

Governor Perry has called the Legislature back into special session to address issues relating to redistricting, transportation funding, juvenile justice, and abortion. As a courtesy to members, the Legislative Study Group has prepared an overview of the legislation pending before the House.

Redistricting

Background

Governor Perry has called the Legislature back in to special session to adopt the interim maps for the Texas House of Representatives, Texas Senate and Congressional districts as permanent. As written, the call for the special session is very narrow:

Legislation which ratifies and adopts the interim redistricting plans ordered by the federal district court as the permanent plans for districts used to elect members of the Texas House of Representatives, Texas Senate and United States House of Representatives.

The narrow call was crafted to disallow any possible amendments that could improve the interim maps. However, leaders in the House and Senate have indicated that members will be able to offer amendments and alternate maps.

Process

The Senate on Friday passed SB 2, maps for the Texas Senate, 26-0. They passed SB 3, maps for the Texas House and SB 4, maps for the US Congress, 16-11. The chair of the House Select Committee on Redistricting has indicated that the committee will consider these maps and alternates later today, Monday. It is expected that these maps will be brought to the floor of the House later this week.

Interim Maps

The current maps were drawn by the Federal Court in San Antonio for use during the 2012 election cycle. However, they were never intended to be permanent maps, and there has been no evidence during the redistricting saga that adopting them permanently would mitigate



future litigation. If anything, adopting these maps as permanent merely shows further discriminatory intent and would invite additional litigation.

During the 82nd Legislative Session, members of the Legislature worked to present alternatives to the legislatively enacted maps that demonstrated how communities of color should be able to elect the candidates of their choice. Unfortunately, the Legislature chose not to adopt any of those alternatives and instead adopted Plan H 289. Even though people of color are responsible for 89% of Texas population growth in the last decade, the plan passed by the Legislature was blatantly retrogressive and diluted the ability of African Americans, Latinos, and other language minorities to elect candidates of their choice.

Because of those clear violations of the Voting Rights Act, those plans were denied preclearance by a Washington, D.C district court, and a San Antonio district court drew up new maps to be used in the interim while the judicial process continued.

Conclusion

The interim maps were intended to be used as a stopgap and were never meant to seek out and correct the multiple alleged violations of the Voting Rights Act. By attempting to short circuit the judicial process, the state is once again failing to account for the large increase in minority populations over the last decade. The Legislature should not adopt these maps and should instead wait for the federal courts to issue rulings and take corrective measures.

Transportation Funding

Background

Governor Perry has added legislation relating to transportation funding to the call of the special session. Specifically, the call reads:

Legislation relating to the funding of transportation infrastructure projects.

The House and Senate have proposed competing constitutional amendments to address the shortfall in the state’s transportation budget. The two main proposals are SJR 2 by Sen. Nichols, and HJR 16 by Rep. Pickett. As a consequence of each proposal, half of all future Rainy Day Fund money would be untouchable to lawmakers for any measure, thereby limiting the legislature’s ability to stabilize economic services wherever it is needed most in the future.

The state of Texas does not collect enough revenue to maintain investments in education, health care, water, transportation, and other crucial state services.



SJR 2 and HJR 16 create no new revenue for the state; instead, they merely redirect existing dollars the state would already have access to and could already appropriate.

The Center for Public Policy Priorities testified in the Senate Finance committee hearing on SJR 2 that it is possible the “new money” freed up from the Rainy Day Fund by these proposals would only result in the Legislature appropriating that much less in general revenue funding in the future towards the targeted issues, creating a shell game that fails to actually increase the state’s investment.

Transportation Funding During the Regular Session

During the Regular Session, the Texas Department of Transportation (TxDot) stated that it needs an extra \$4 billion annually for transportation just to maintain existing levels of congestion on Texas’ roads. An additional \$1.6 billion was requested to address road repairs in rural areas of the state under heavy use due to energy development. Of the \$9.6 billion requested, the Legislature appropriated \$850 million – \$450 million for roads in booming shale areas, and \$400 million for general transportation for the two-year budget cycle. Additionally, lawmakers passed several bills to allow for local communities to continue building roads as they have been built for years – with tolls and debt.

SJR 2 and HJR 16

Both SJR 2 and HJR 16 would split the amount of money deposited in the Rainy Day Fund by half.

SJR 2 says that of the existing dollars currently transferred to the Rainy Day Fund, 50% would go to the Rainy Day Fund as it traditionally does, while the other 50% would automatically be redirected to the State Highway Fund. The fiscal note for SJR 2 states that this would generate approximately \$889 million more for the 2014-2015 biennium, with none of those dollars available until September 1, 2014 – at the end of the 2014 fiscal year.

HJR 16 creates a similar 50/50 split, but it redirects half the dollars to the Available School Fund. To increase funding for roads, HJR 16 would undo the allocation of the state’s 20-cent gas tax that currently goes to schools, and keep it flowing towards transportation.

Rainy Day Fund

Currently, the state’s Rainy Day Fund is projected to have nearly \$11.8 billion in its balance at the end of the 2014-2015 biennium. If voters approve a November 2013 constitutional amendment for water, that number would be reduced to \$9.8 billion. News reports have stated that SJR 2 and HJR 16 would reduce the amount in the Rainy Day Fund by an additional \$2-3



billion, although since the fiscal note for the legislation is only \$889 million for the current biennium, it is unclear how those reports reached those totals.

There is a desire from some lawmakers to include a provision in SJR 2 or HJR 16 that would transform the Rainy Day Fund into a permanent endowment that could never dip below a specified amount. An amendment added by Sen. Patrick to SJR 2 in the Senate Finance committee states that if the Rainy Day Fund amount ever dips below \$6 billion, the money that would have been automatically redirected to transportation by SJR 2 would instead stay in the Rainy Day Fund account to ensure that it never goes below \$6 billion.

The push to create a minimum amount in the Rainy Day Fund is based on unfounded concerns by some lawmakers that a specific amount must be kept in the Rainy Day Fund to protect the state's credit ratings. However, neither the Texas Comptroller nor any credit agency has stated what such an amount may be, and the state has completely depleted the Rainy Day Fund in past legislative sessions without any threat to the state's credit ratings.

Conclusion

Both SJR 2 and HJR 16 would tie the hands of future lawmakers to use the Rainy Day Fund as it was intended: to stabilize state services. By forever removing half of the money available to lawmakers for future emergency appropriations, the state would be forfeiting significant control of a major appropriation tool without any guarantee that the dollars spent from the Rainy Day Fund would not merely supplant general revenue investments.

Even with the proposed constitutional amendments, the state would fall incredibly short of where it needs to be to invest more money in roads. With nearly \$12 billion projected to be in the state's Rainy Day Fund by the end of fiscal year 2015, the state would do much better to simply appropriate \$2 billion straight out of the Rainy Day Fund into transportation – over twice the amount possible under either constitutional amendment, which could fail if not passed by voters in November – and use the interim months to gather support for a more permanent revenue stream to increase investments in transportation.

Juvenile Justice

Background

Governor Perry has added legislation dealing with juvenile justice to the call of the special session. Specifically, the call states:

Legislation relating to establishing a mandatory sentence of life with parole for a capital felony committed by a 17-year-old offender.



This legislation was filed during the regular session of the Legislature as SB 187. The bill passed the Senate on the Local and Uncontested Calendar, but failed to pass on the General State Calendar in the House before the deadline for considering Senate bills.

Currently, a 17-year-old offender that commits a capital murder is classified as an adult and is eligible for the death penalty or life without parole. However, recent Supreme Court rulings have limited the scope of punishment for individuals younger than 18. A 2005 case, *Roper v. Simmons*, ruled that the death penalty cannot be used for offenders who were younger than 18 when the crime was committed. A 2012 case, *Miller v. Alabama*, ruled that life without the possibility of parole for juvenile offenders was unconstitutional.

Proposed Legislation

As a result of these rulings, the two punishments available for a 17-year-old capital murder offender in Texas are now unconstitutional. SB 187 would have put 17-year-olds under the same umbrella as offenders aged 14-16: life in prison with the possibility of parole after 40 years without consideration of good conduct time.

Conclusion

While it is important to bring statute in line with Supreme Court rulings to give prosecutors the ability to properly pursue capital murder charges for 17-year-old offenders, the continuation of mandatory minimum sentences instead of individualized sentencing is concerning.

Abortion

Background

Governor Perry has added issues relating to abortion to the call of the special session. The call reads:

Legislation relating to the regulation of abortion procedures, providers and facilities.

Multiple bills that may fall under the scope of the call have been introduced. The Senate began hearings last week. The LSG recommendation for all of the possible anti-choice bills is unfavorable.

SB 5

SB 5 by Sen. Hegar is the main vehicle for anti-choice legislation. Among other things, the bill would require a doctor performing an abortion to have hospital admitting privileges, would ban abortion at or after 20 weeks, would require a prescription for emergency contraception, and would require strict minimum standards for abortion facilities.



Limiting the period to have an abortion to 20 weeks is unfavorable, likely unconstitutional, and violative of women’s health.

Requiring facilities to meet the same standards as ambulatory centers is also troubling. Abortions performed after 17 weeks of gestation are already required to be performed in an ambulatory center. This provision is unnecessary and would likely reduce access and increase costs of safe, legal facilities.

The bill would likely result in the closure of 37 of the state’s 42 abortion-related facilities.

Conclusion

Sen. Hegar has filed a stand-alone bill relating to the abortion ban after 20 weeks. Additionally, Sen. Patrick has filed legislation that would put onerous restrictions on the ability of doctors to prescribe safe, approved drugs based on the best medical evidence and safety of their patients. Similar bills have been filed in the House. Taken together, these bills represent an assault on women’s healthcare in the state of Texas.

LSG in the Special Session

As these and any other bills progress through the special session, the LSG will continue to operate for members as it did during the regular session. Members can expect comprehensive bill analyses and evaluations for all bills on the Major, General, and Constitutional Amendments Calendars. If LSG staff can provide any assistance or answer any questions, please feel free to contact the office.