



ON YOUR MARK, GET SET, GO??

By Kenneth Besserman, JD, TXCPA Director of Government Relations and Special Counsel

By the time this article appears in *Today's CPA* magazine, we will have weathered a tumultuous few months of post-election turmoil, COVID-19 spikes, and the approval and beginning of the distribution of multiple vaccines to battle the pandemic, while looking ahead to the inauguration of President Joe Biden. All of this happened just in the last couple of months of a whirlwind 2020. With the election behind us, the new presidential administration in front of us and the pandemic still amongst us, 2021 will also be an interesting year for the Texas Legislature.

The 87th legislative session is shaping up to be one of the most interesting sessions in recent memory. Texas has seen oil busts, savings and loan scandals, national financial crises come and go, and redistricting battles that have significantly interrupted budgets and legislative sessions. But the COVID-19 pandemic has made many of the past disruptions fail in comparison. The uncertainty of COVID has interrupted, stalled and shut down legislative sessions around the country.

When the legislative session begins, the Senate and House will adopt COVID-19 protocols and policies to

allow the legislature and public to function amidst the pandemic. Beyond session operations, all eyes will be on the legislature to see how they respond to the state budget, business concerns during and post pandemic, school openings and remote learning, and many other issues.

The biggest takeaway from the 2020 election in Texas is that the vaunted, much anticipated Blue Wave never materialized. Not only did it not materialize, the Blue Wave was held so firmly in check that because of redistricting that is on the horizon, it may be many election cycles before Democrats will have an opportunity to capture a significant number of House and Senate seats.

Prior to the election, the Texas Senate was comprised of 19 Republicans and 12 Democrats. The election saw all members of the Senate, except one, who were up for reelection return to the Senate and two new senators – Cesar Blanco (D-El Paso) and Sarah Eckhardt (D-Austin) – retain those seats for their party. In San Antonio, Senator Pete Flores (R-San Antonio) was defeated by Rep. Roland Gutierrez (D-San Antonio), thereby making the Senate party split 18 Republicans and 13 Democrats.

After a general election that saw the Republicans maintain their 83-67 majority in the Texas House, Representative Dade Phelan (R-Beaumont) has been voted in as Speaker of the House. Phelan's accession to the speakership brings a new tenor and style to the House. In November 2020, Phelan convened a bipartisan group of legislators to develop House policies and protocols to address how the House would operate during the 2021 session – everything from how the legislature will operate to how open, accessible and transparent the Texas Capitol, committee hearings and legislative offices will be.

It is too early to determine how the important legislative issues – budget, business liability for reopenings, redistricting, pandemic-related school instruction – will be resolved. Likewise, it will take time for the House, Senate, staff, lobbyists and general public to become acclimated to operating in a different environment.

One of the big takeaways that has come of the pre-session conversations is that all parties – legislators, lobbyists, interest groups – need to pare back their wish list of legislation or must-needs because in all likelihood, far fewer bills will be heard in committee, debated on the floor, or signed into law. Interestingly, since bill filing began on November 9, there has been a 15% increase of bills filed compared to the 2019 session. While unexpected, it is thought that legislators may be filing more bills in order to be on record in support of an issue knowing that most bills will not pass during the session.

Session Amidst a Pandemic

At the time of this writing in December 2020, both the House and the Senate are working on COVID-related policies for session operations. While formal policies and rules will not be finalized until the legislature convenes, there is some broad agreement about some operations. The first 60 days of the session will see very few committee hearings other than Senate Finance and House Appropriations meetings on the state budget.

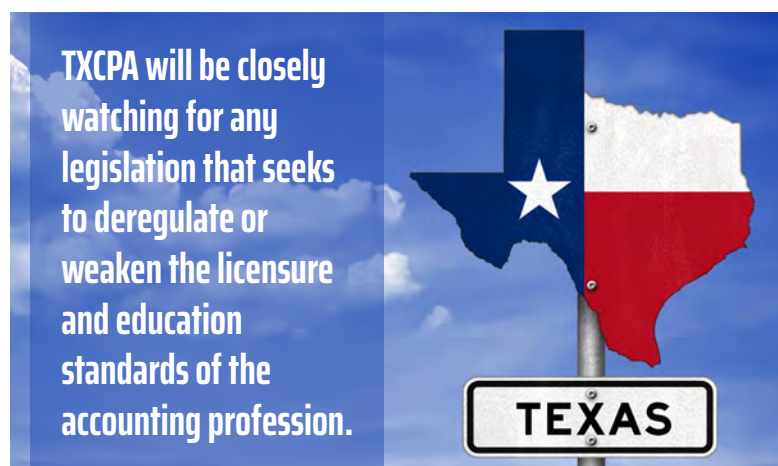
Opening day of the session, usually packed with guests and visitors, will be much shorter in duration and with far fewer guests and the public able to see opening day in person. There is discussion about mandating masks for those in the Capitol. In addition, witnesses and those attending committee hearings may have to register in advance to attend hearings and also be tested for COVID-19 before entering the building.

The state budget is always the most important issue that the Texas Legislature tackles every session. The past few sessions, Texas has seen enormous budget surpluses and large budget deficits. From the financial crisis to drops in oil prices to property tax reform, the legislature has

seen many good times and some bad times. The COVID pandemic has had a significant impact on the state budget and legislators will have to address those budget impacts.

Comptroller Glenn Hegar has been closely monitoring the state budget and in July 2020, he issued a revised budget estimate based on the impact of the pandemic up to that point. "We went from a \$3 billion surplus in the current two-year budget to what now is estimated to be a \$4.6 billion deficit. Now, part of that is going to be lessened because state leadership instructed agencies to reduce their expenditures," Hegar said. "That probably saves about \$1 billion, which is not taken into account for the \$4.6 billion deficit because those dollars are retained in the treasury."

Over the 2020 summer months, the state had an unexpected increase in sales tax collections, which may lessen the budget deficit that legislators will see in January 2021. This is good news; however, the fall months of 2020 saw sales tax collections decrease year over year, causing further strain on the state budget. At the start of



the 2021 legislative session, Hegar will issue his biennial revenue estimate detailing the state's financial condition, projected revenues and the projected budget deficit. As of late 2020, the Comptroller's office has indicated that while a budget deficit is certain, and there may be some budget cuts, it will be manageable and not as severe as in past budget tightening sessions.

Texas may be in a better position than many other states because of the substantial balance in the Economic Stabilization Fund (also known as the Rainy Day Fund). The Comptroller's office is predicting that by the end of the current budget cycle (August 2021), there will be approximately \$9 to \$10 billion in the Rainy Day Fund. There may be some willingness by members of the legislature to use some of the Rainy Day Fund to shore up the deficit.

In addition, the Comptroller's office has indicated that there are several billion dollars of federal COVID funding that the state has received that may be able to be used to offset either local or state budget issues. State leaders are working with the federal government to allow those federal funds to be used for other purposes.

Additional federal stimulus legislation has been bottlenecked in Congress for many months. At the time of the writing of this article (December 2020), there has been some positive movement in Congress to pass another stimulus bill. One of the biggest sticking points is the issue of business liability for reopenings during the pandemic. That provision has been pulled out of the latest version of the stimulus bill in order for the

the business climate and economy of the state. TXCPA will be part of those discussions and we will keep you informed of the progress and bill language.

Beyond the budget and business liability issues, redistricting will likely take up much of the attention of the legislature. Redistricting is the most partisan and political issue that the legislature faces. With Texas predicted to gain three Congressional seats, and the Texas House of Representatives and Senate firmly in Republican control, the vast majority of seats in the newly drawn Congressional map will continue to favor Republicans.

Generally, the legislature receives the federal census numbers in the spring of a regular session, and then the legislature draws maps and votes on maps during the session. In these uncertain times and with some reports that the census numbers may not be received until June or July 2021, the legislature may not be able to address redistricting during the regular session.

The state House and Senate maps could be debated in a special session after the 2021 session, in the 2023 regular session, or there may be an effort to move the issue directly to the Legislative Redistricting Board – a body composed of the lieutenant governor, speaker of the House, attorney general, comptroller and general Land Office commissioner – who are constitutionally mandated to draw state House and Senate maps if the legislature is unable to do so. Congressional maps will likely be drawn by a federal court, after the legislature attempts, as in past redistricting cycles.

Another issue that will be the focus of the session is the governor's emergency powers. Legislators from both parties and across the political spectrum have questioned the legal authority that the governor is using to suspend, amend, and waive rules and regulations during the pandemic. There have been proposals to amend the Texas Disaster Act to rein in the governor's authority under the Act or to expressly define what the governor can and cannot do under the Act.

In addition, there are proposals to set up emergency or disaster boards or commissions and giving those bodies certain powers to address issues during a declared disaster or emergency. The Texas Disaster Act has largely been untouched in over a generation, so there is a good chance that the legislature will make some changes this session in how future emergencies and disasters are handled.

CPA and Accounting Issues in the 2021 Session

The TXCPA Legislative Advisory Committee and Executive Committee approved the 2021 Legislative Priorities in the

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Grassroots political action is a vital element of TXCPA's governmental affairs efforts and the Key Person Program is just one of the ways members can get involved with the grassroots action in Texas. Key Person volunteers provide their assigned legislator with important information on tax and accounting related issues, act as a spokesperson for the profession and help TXCPA achieve important legislative objectives. This is especially important as we head into the 2021 Texas Legislative session. [Watch this video](#) to hear fellow members explain how getting involved with TXCPA's advocacy efforts can be easy, fun and rewarding!

provisions that have much bipartisan agreement to be debated and passed.

Business liability protections will also be addressed during the 2021 session. At least two dozen states have passed various forms of business liability protection – from protections for health care workers and first responders to protections for schools to limits on who may sue to legal defenses for businesses that reopen according to CDC and local regulations.

Many Texas business groups, associations, and employee groups are developing legislative solutions that are seeking to protect the health and safety of employees returning to work and businesses trying to do the right thing. The governor has stated that this issue is vital to

fall of 2020. The Government Relations staff will focus on those priorities during the session and make sure that your voices are heard in the Capitol. Those priorities include:

- Sales tax on professional services;
- Proper and rigorous regulatory oversight of the accounting profession (opposing the deregulation of the accounting profession);
- Extending the fingerprinting deadline for CPA licensees beyond August 2021;
- Tax reform (monitoring all tax changes – whether tax rates, deadlines or new taxes – proposed by the legislature); and
- Business liability issues.

The 2021 session may see issues that will touch the accounting profession and all businesses. The state budget is under significant stress because of lower sales tax collections during the pandemic. While Texas is expected to fare better than other states, there will be pressures on legislators to make cuts, raise revenues and find ways to help citizens, employees, employers, cities, and other entities that have struggled to make ends meet during the pandemic.

There has been legislation in other states that has sought to impose sales taxes on professional services and to remove or cut back professional licensing standards and requirements. National licensing organizations and state professional societies have taken an active role in lobbying state legislatures about the importance of rigorous licensing regimes as a way to protect the public from unscrupulous actors. TXCPA will be closely watching for any legislation that seeks to deregulate or weaken the licensure and education standards of the accounting profession. The Society feels strongly that proper licensing and certification of professions is necessary to ensure that the public is protected and public confidence in the profession is maintained.

Stay tuned for regular legislative updates during the 2021 session and requests from our Government Affairs team to engage in key issues and important legislation. If you are interested in advocacy and our Key Persons program, please reach out and we will get you involved.

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