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Date: May 3, 2021

To: Texas BOMA and Local Associations

From: Robert Miller, Crystal Brown, Sarah Lacy and Nef Partida

Re: 87th Legislative Session Update -- April 2021

General Overview

The 87th Regular Session is in the home stretch, and only four weeks remain prior to adjournment sine die on May 31. As always, long days and nights await in May as the House and the Senate scramble to get legislation across the finish line. A balanced biennial budget is the one bill the legislature must pass, and it currently appears to be on track. SB 1 is an approximately \$250 billion two-year budget that is currently being negotiated by a conference committee made up five members from the House and five members from the Senate.

Other major legislation likely to pass includes: response to Winter Storm Uri and the electricity blackouts; expanding rural broadband internet access; punishing local governments that “defund the police”; police reforms; changing the bail system; “election integrity” legislation (as called by Republicans) or “voting restrictions” legislation (as called by Democrats); providing civil liability protections for businesses that were open during the pandemic; additional restrictions on abortion; and permitless carry of handguns.

The last day for the House to pass House bills is May 13, and the last day for the House to pass Senate bills is May 26. The last day for the Senate to pass House bills is also May 26. The 87th Regular Session will adjourn on May 31, and Governor Abbott will have until June 20 to sign, allow to become law without his signature, or veto, all bills that reach his desk.

The legislative session started out slowly because of the pandemic, and was walloped by the polar vortex. However, around the beginning of April, the legislature shifted into high gear and the number of bills that appear likely to pass is approaching what we would normally expect.

However, we know that will need to have a special session for redistricting, probably in October or November, and this has altered the end game of the session. Ordinarily, the House and the Senate negotiate to resolve their differences on legislation with the objective of getting everything done to avoid a special session. However, given that we already know there will need to be a

special session, there may be more intransigence at the end which could cause major bills to die and need to be taken up in the special session.

Status of BOMA Legislation

Civil Liability Protection

- Senate Bill 6 (Hancock): Texas BOMA members were not immune from the devastating impacts of COVID-19. Commercial building owners and managers run the risk of being exposed to liability claims even when they have made a good faith effort to limit the risk of exposure and infection to tenants, customers and employees while adhering to public health guidelines. This session Texas BOMA supported legislation that would ensure civil liability protections for building owners and managers. SB 6 will provide retroactive civil liability protections for large and small businesses, religious institutions, non-profit entities, healthcare providers, first responders, and educational institutions. The bill was passed by the Senate; referred to the House Committee on Judiciary and Civil Jurisprudence where the committee voted favorably for the bill; and is now awaiting placement on the House Calendar.

Electric Grid Reforms

After the February winter storm that cause Texas to experience widespread power outages throughout the state, Texas BOMA made electric grid reliability and resiliency a top priority for the legislative session. Both the Texas House and Senate filed multiple bills aimed at addressing the problems caused by Winter Storm Uri.

Senate

- Senate Bill 2 (Hancock): SB 2 modifies the governance and administration of the Electric Reliability Council of Texas' (ERCOT) Board of Directors. The bill requires all changes to ERCOT protocols to be presented to the Public Utility Commission of Texas (PUC) before adoption so that the PUC commissioners can have the opportunity to veto any changes before they go into effect. SB 2 passed the Senate and will be heard in the House Committee on State Affairs May 6.
- Senate Bill 3 (Schwertner): SB 3 makes sweeping changes that would overhaul the state's electricity industry and help ensure power reliability. The bill, among other things, bans wholesale index price plans for residential and small commercial customers; requires the weatherization of all generation, transmission, and natural gas facilities and pipelines within the State of Texas; creates a statewide emergency alert system for future power outage events; creates the Texas Energy Reliability Council that would help coordinate the state's energy regulators, electricity generators and natural gas fuel industry to meet the energy and electric needs of the state; and requires the PUC and Railroad Commission (RRC) to conduct on-site inspections of the facilities to ensure compliance. SB 3 passed the Senate and will be heard in the House Committee on State Affairs May 6.

House

- House Bill 10 (Paddie) HB 10 restructures the ERCOT Board; replaces the unaffiliated members with members appointed by the Governor, Lt. Governor, and Speaker of the House; requires all board members to reside in the state of Texas; and creates an additional ERCOT board member slot to represent consumer interests. HB 10 passed the House and will be heard in Senate Jurisprudence Committee May 3.
- House Bill 11 (Paddie): HB 11 requires electric transmission and generation facilities in this state to be weatherized against the spectrum of extreme weather Texas may face. HB 11 passed the House and will be heard in Senate Jurisprudence Committee May 3.
- House Bill 12 (Raymond): HB 12 creates a statewide disaster alert system administered by Texas Department of Emergency Management (TDEM) to alert Texans across the state about impending disasters and extreme weather events. The alerts will also provide targeted information on extended power outages to the state's regions most affected. HB 12 passed the House and will be heard in Senate Jurisprudence Committee May 3.
- House Bill 13 (Paddie): HB 13 establishes a council composed of ERCOT, PUC, RRC, and TDEM leaders to coordinate during a disaster. The committee will identify challenges with fuel supplies, repairs, energy operations and prevent service interruptions from the wellhead to the consumer. HB 13 passed the House and will be heard in Senate Jurisprudence Committee May 3.
- House Bill 14 (Goldman): HB 14 requires the RRC to adopt rules requiring gas pipeline operators to implement measures that ensure service quality and reliability during an extreme weather emergency, which covers winter and heat wave conditions. HB 14 passed the House and has been referred to the Senate.
- House Bill 16 (Hernandez): HB 16 prohibits a retail electric provider from offering a wholesale indexed product to residential and small commercial customers. HB 16 passed the House and passed the Senate. The bill is awaiting approval from the House to accept changes made in the Senate.
- House Bill 17 (Deshotel): HB 17 prevents a political subdivision from adopting an ordinance, regulation, code or policy that would prohibit the connection of residential or commercial buildings to specific infrastructure based on the type or source of energy that will be delivered to the end user. HB 17 passed the House and was placed on the Senate Intent Calendar.

Property Tax Reforms

In 2019, the Texas legislature passed SB 2, the Texas Property Tax Reform and Transparency Act of 2019, which made significant changes to the property tax and appraisal system in Texas. This session the legislature continued its effort to reform the state's property tax and appraisal system.

Closing the Loophole

- Senate Bill 1438 (Bettencourt): SB 1438 repeals sections added in SB 2 (2019) pertaining to the calculation of tax rates in a disaster area. There were multiple jurisdictions that attempted to use the pandemic disaster declaration as a way to increase revenue above the 3.5 percent voter-approval rate back up to eight percent. SB 1438 seeks to clearly codify when the disaster exception would apply and for how long. The bill also specifies which types of disasters apply for the exemption (ex: tornado, hurricane, flood, wildfire, or other calamity) and specifically excludes those types of disasters that would not apply (ex: drought, epidemic, or pandemic). SB 1438 was passed by the Senate and House.
- Senate Bill 1427 (Bettencourt): Last session HB 492 passed and the constitutional amendment was approved by voters to allow for an automatic exemption if your property was damaged during a declared disaster. Due to the statewide disaster declaration due to the pandemic, there were efforts made to access this exemption. SB 1427 seeks to remove any doubt that only physical damage exemptions are available. SB 1427 passed the Senate.
- Senate Bill 1428 (Bettencourt): Last session in SB 2 a drought was specifically excluded as a reason to permit revenue increases above the 3.5 percent voter-approval rate. SB 1428 adds epidemic as an additional exclusion to exceed the voter-approval rate when a disaster has been declared. SB 1428 passed the Senate.

Opposing Equal and Uniform, Appraisal Caps, and Sales Price Disclosure

- Equal and Uniform
 - House Bill 1099 (Beckley): Texas law requires appraisal districts to assess property values on an equal and uniform basis; ensuring similar properties are valued in a similar manner. HB 1099 would restrict the use of equal and uniform property tax appraisal reviews. This bill did not receive a hearing.
- Appraisal Caps
 - Several appraisal cap bills were filed (ex: HB 96, HB 299, HB 528, HB 529, HB 1053, HB 3321, SB 489). Appraisal caps restrict how much property valuations can increase on real property. None of these bills received a hearing.
- Sales Price Disclosure
 - HB 1101(Beckley): HB 1101 requires mandatory sales prices disclosure in real property sales. Texas is a non-disclosure state which means that real estate sales prices do not need to be publicly disclosed with a government entity. This session there was an effort to change this law and require the disclosure of all real estate sales prices in order to establish the value of real property. The bill was left pending in committee.

Mechanic's Lien Laws

Texas law allows those persons working on improvements to real property to put liens on the real property in the event they are unpaid. Every recent legislative session has included an effort, mainly led by subcontractors, to completely overhaul the state's lien system. The overhaul bill was not filed during the 87th session; however, several other bills affecting mechanic's liens were filed.

- House Bill 2237 (Burrows): HB 2237 is a bill that clarifies the process for mechanic's and materialmen's liens. The bill has four main objectives: to maintain the existing timing and notice concepts under the current law, to make the lien chapter easier to understand, to make a few minor substantive changes in favor of a simpler statute, and to streamline and improve the existing law. The primary substantive change includes the removal of a "Second Month" notice for down-stream subcontractors and suppliers. The bill was voted out of the House Committee on Business and Industry.
- House Bill 1679 (Romero): HB 1679 would require that a property sold during a foreclosure of a lien would be transferred subject to the amount of retainage included in an unreleased lien. The bill was voted out of the House Committee on Business and Industry.

Other Important Texas BOMA Issues

- House Bill 1418 (Leach): HB 1418 provides that a builder is not responsible for the consequences of defects in design or bid documents provided to the builder by the person with whom the builder has entered into a construction contract. The bill would require a contractor, within a reasonable time of learning of the defect, to disclose in writing to the person with whom the contractor enters into a contract the existence of any known defect in the plans, specifications, or other design or bid documents that is discovered by the contractor before or during construction. The bill also prevents an owner from requiring a builder to waive this protection by contract. This bill has been postponed until May 3. The author is still negotiating with stakeholders.
- House Bill 1925 (Capriglione): HB 1925 creates a statewide ban on public camping. The bill was voted out of the House Committee on State Affairs and is waiting for placement on House calendar.
- House Bill 3803 (Geren): HB 3803 will require the Texas State Board of Plumbing Examiners to adopt one single plumbing code, the International Plumbing Code (IPC). Current law allows Texas cities to operate under the plumbing provisions of either the IPC or the Uniform Plumbing Code (UPC). A vast majority of cities have adopted the IPC while only 8 cities have adopted the UPC. The bill was left pending in committee.
- Senate Bill 243 (Eckhart)/House Bill 4556 (Anchia): These bills would expand Texas' goal for energy efficiency to 1% of annual energy savings by 2025. Both bills were left pending in committee.

- House Bill 2775 (Cain) /Senate Bill 566 (Buckingham): These bills gives Austin Energy ratepayers the ability to appeal the rates set by the city council to the PUC. SB 566 passed the Senate and HB 2775 was voted out of the House Committee on State Affairs.
- Senate Bill 14 (Creighton): SB 14 prohibits a municipality or county from requiring certain employment benefits or policies. This would targets the paid sick leave benefits. This bill passed the Senate.