

Recap of the 86th Texas Legislature

Texas Municipal Utilities Association
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Irving Convention Center

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Troupe Brewer

Lloyd Gosselink Rochelle & Townsend, P.C.

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- Introduction of 86R
- Passed Legislation
 - Local Government
 - General Water
 - Water and Wastewater Utility
- Failed Legislation
 - Vetos



Introduction to the 86th Legislature

New Faces & Priorities

Incumbent Election Issues

- **There were 48 contested Texas state legislative Republican primaries in 2018**
 - Disputes from previous carry over – Gov. Abbott & Lt. Gov. Patrick outspokenly anti-Straus and supported primary candidates against certain R incumbents
- **House incumbents defeated in Republican primaries**
 - Wayne Faircloth (District 23) to Mayes Middleton
 - Scott Cosper (District 54) in a run-off to Brad Buckley
 - Jason Villalba (District 114) to Lisa Luby Ryan (who then lost in general election)
- **House incumbent spots lost to Democrats**
 - District 47- Paul Workman (i) (R) to Vikki Goodwin (D)
 - District 65- Ron Simmons (i) (R) to Michelle Beckley (D)
 - District 102- Linda Koop (i) (R) to Ana-Maria Ramos (D)
 - District 105- Rodney Anderson (i) (R) to Terry Meza (D)
 - District 132- Mike Schofield (i) (R) to Gina Calanni (D)
 - District 135- Gary Elkins (i) (R) to Jon Rosenthal (D)
 - District 136- Tony Dale (i) (R) to John Bucy III (D)
- **Senate incumbent seats lost to Democrats**
 - District 10- Konni Burton (i)(R) to Beverly Powell (D)
 - District 16 –Don Huffines (i)(R) to Nathan Johnson (D)

Republicans Won All Statewide Offices

- Governor: Republican – Greg Abbott received 55.84% of vote
Democrat – Lupe Valdez received 42.46% of vote
- Lt. Governor: Republican – Dan Patrick received 51.34% of vote
Democrat – Mike Collier received 46.43% of vote
- Attorney General: Republican – Ken Paxton 50.59%
Democrat – Justin Nelson 46.97%
- Comptroller: Republican – Glenn Hegar 53.23%
Democrat – Joi Chevalier 43.35%.
- Land Commissioner: Republican – George P. Bush 53.74%
Democrat – Miguel Suazo 43.13%
- Agriculture Commissioner: Republican - Sid Miller 51.3%
Democrat – Kim Olson 46.36%
- Railroad Commission: Republican – Christi Craddick 53.28%
Democrat – Roman McAllen 44.18%

- Texas House of Representatives makeup for 85th Legislative Session
 - Republicans-95, Democrats-55
- **Texas House of Representatives makeup for 86th Legislative Session**
 - **Republicans- 83, Democrats-67**
- House Democrats flipped 12 seats
- 32 new members

- Texas Senate make up for 85th Legislative Session
 - Republicans-21, Democrats-10
- **Texas Senate make up for 86th Legislative Session**
 - **Republicans- 19, Democrats-12**
- Senate Democrats flipped 2 seats
 - District 10 (Tarrant County) - Republican Konni Burton (48.28%) was beaten by Beverly Powell (51.71%)
 - District 16 (Dallas County) – Republican Don Huffines (45.93%) lost to Nathan Johnson (54.06%)
- 6 new members
- Key: 2/3rds Rule repealed in 2015 - Texas Senate rules require 3/5 vote to hear a bill on the floor

New House Speaker

Rep. Dennis Bonnen (R) - Angleton



- First elected at age 24
- Has served Texas House District No. 25 since 1997 (Brazoria County - Freeport, Bay City Area)
- This is his 12th term
- In 84th and 85th sessions, he served as Chairman of the House Ways and Means Committee
 - In 85th was a member of the House Culture, Recreation & Tourism Committee
 - Has previously served as Chairman of the Environmental Regulation Committee, Sunset Advisory Committee and the House Special Purpose Districts Committee, as Vice Chairman of the Joint Committee of Oversight of Higher Education Governance, Excellence and Transparency, and as a member of the Natural Resources Committee

Comptroller's Revenue Projections

- The primary purpose, and only constitutionally required task, of a legislative session is to prepare and pass a balanced state budget for the upcoming two fiscal years.
- State Comptroller Glen Hegar released his biennial revenue estimate: ***\$119.1 billion***
 - He estimates \$119.1 billion in state revenue will be available for general-purpose spending in the two-year budget period, beginning on Sept. 1.
 - The Legislature uses this estimate as a guideline while preparing the state's budget.

Comptroller's Revenue Projections

- 8.1 percent more state funds available compared to last biennium (\$119.1 billion is up from 110.2 billion two years ago)
 - Typical Major Spends - schools, transportation, and healthcare
- Economic Stabilization Fund (aka 'Rainy Day Fund') projected to be at record high 15 billion
 - May be dipped into, potentially for Harvey/Flood Relief or Public School Finance
- What's up: Oil production
- What's down: Motor Vehicle sales



Gearing up for the 86th Texas Legislature

Key Dates

- **November 12, 2018: Pre-file opens**
 - 400 bills filed that day
 - Over 1,200 now
- **January 8, 2019: Session Begins**
- **January 15, 2019: Governor and Lieutenant Governor inauguration**
 - General appropriations bills sent to governor by Legislature
- **March 8, 2019: Deadline for the unrestricted filing of bills (other than local bills, emergency appropriations, and emergency matters submitted by the governor)**
- **May 27, 2019: Sine die**
- **June 16, 2019: Last day Governor can veto bills**
- **August 26, 2019: 91st day following Sine Die – bills without effective dates become effective**

86th Legislature Committee Assignments

- House: Assigned by Speaker Bonnen
 - Preference cards due January 15
 - Assignments by the end of the month at earliest
 - Rep. Joe Pickett, (D) El Paso, Resigned, Chair of Env Reg.
- Senate: Assigned by Lt. Gov. Patrick
 - No earlier than after inauguration on January 15
 - Sen. Charles Schwertner, (R) – Georgetown, stepping down from Chair of HHS Committee
 - Increased standing committees from 14 to 16, adding committees on property tax and agriculture

The Big Three at Yalta 1010 Colorado

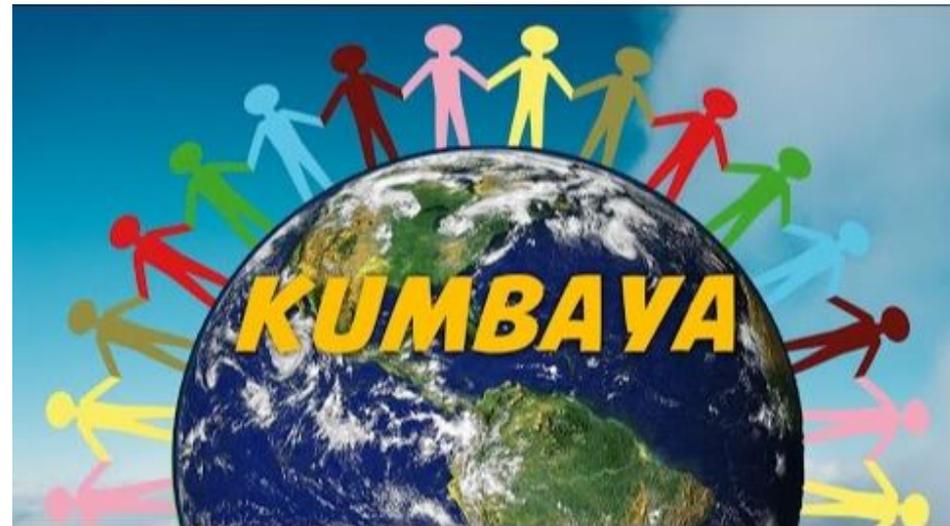
- Differences Resolved? Jan 9th PC :
- "We are here today to send a very strong, profound and unequivocal message — that the governor, lieutenant governor and speaker are working in collaboration together on a very bold agenda that will be transformative for the state of Texas." – Gov. Abbott
- "If the three of us are aligned that we're going to accomplish a mission and pass legislation, it happens. And if the three of us are aligned that something *isn't* going to pass, it doesn't happen. So this is not just a message to the public and to the media, but I think our members will take note that this is really unprecedented that we're addressing the issues beginning of session, totally united with one another." – Lt. Gov. Patrick



- Re: his relationship with now-Speaker Bonnen: "I'm more relaxed this session around because I feel like I have a partner on the other side I can work with." – Lt. Gov. Patrick

A New Day?

- Smaller GOP majority in Senate and especially House – more bipartisanship?
- “Collaboration,” “totally unified,” “a partner on the other side.”
- Agreement from leadership on key issues heading into Session.



Key Issues

- School Finance & Property Tax Reform
 - Led to unresolved stand-off during 85th - competing proposals of House and Senate with no resolution
 - Speaker Bonnen mentioned this one issue at December PC, but certainly a priority of Lt. Gov. Patrick and Gov. Abbott
- Harvey Relief & Disaster Preparedness
 - Increase ability to prepare via funding for communities & flood infrastructure/mitigation projects
- Border
 - Lt. Gov. Dan Patrick was absent first day of session after being called to the White House/President Trump visit to border
- Use of Rainy Day Fund?

Abbott-Backed Property Tax Reform Plan

- Establish a property tax revenue growth cap of **2.5%** per year.
- Prohibit the Legislature from imposing unfunded mandates on its political subdivisions.
 - The Legislature would be statutorily prohibited from imposing any mandates on local political subdivisions that impose additional costs without providing funding
- Require appraisal district directors to be locally-elected officials, such as incumbent county commissioners or city council or school board members
 - Prohibit employees of taxing entities from serving in any capacity with an appraisal district or appraisal review board
- Improve the rights of property owners in the property tax appraisal process and the property tax appraisal protest process.



Legislation – Local Government

- **SB 239 (Nelson)** – *Relating to the requirements for meetings of certain special districts*
 - Amends TOMA to add WCIDs, FWSDs, MUDs, and WIDs with populations over 500 to the list of entities required to make video and audio recordings of open meetings. Provides other requirements on meeting locations and posting information online.
- **HB 2840 (Canales)** – *Relating to the right of a member of the public to address the governing body of a political subdivision at an open meeting of the body*
 - The governmental body may adopt reasonable rules on this right to address, including time limits.
- **SB 1386 (Watson)** – *Relating to the authority of the TWDB to consider certain financial matters in a closed meeting*
 - TWDB can hold a closed meeting to consider financial matters related to investment of board funds. Final action on such a matter must be made in an open meeting.

SB 2 (Bettencourt) – *Relating to ad valorem taxation*

- Terminology change – “Voter-approval” rate
- 3.5% is new “rollback” threshold
- “Special taxing unit” as “a taxing unit, other than a school district, for which the maintenance and operations tax rate proposed for the current tax year is 2.5 cents or less per \$100 of taxable value”
 - Original rate (8%) applies
- Now requires automatic voter approval election
- Meaning for MOUs?

Disaster Relief & Preparedness

- **SB 6 (Kolkhorst)** - *Relating to emergency and disaster management, response, and recovery.*
 - Requires TDEM to develop a disaster response model guide and a wet debris study group for local communities.
 - Creates a disaster recovery loan program for communities that suffered significant infrastructure damage
- **SB 7 (Creighton)** - *Relating to flood planning, mitigation, and infrastructure projects.*
 - Establishes two new funds, the Texas Infrastructure Resiliency Fund and the Flood Infrastructure Fund, to address the effects of Hurricane Harvey and prepare for future flooding and disasters.
- **SB 8 (Perry)** - *Relating to state and regional flood planning.*
 - Creates framework for a state flood plan through a network of regional flood planning groups, similar to the regional water supply planning process.
- **HB 5 (Phelan)** – *Relating to debris management and other disaster recovery efforts.*
 - Requires TDEM to develop a catastrophic debris management plan and training, as well as creates a work group to advise local governments on how they can assist with recovery efforts.
- **HB 7 (Morrison)** – *Relating to disaster preparation for state agencies and political subdivisions.*
 - Requires gov’s office to maintain a list of regulatory statutes and rules that may require suspension during a disaster.
 - Requires TDEM to develop plan to assist political subdivisions execute contracts for services following disaster.



Legislation – General Water

- **HB 720 (Larson)** – *Relating to appropriations of water for use in aquifer storage and recovery projects* [Effective as of 6/10/19]
 - Amends Chapters 11 and 27 of the Water Code
 - Allows appropriation, storage, or diversion of state water for aquifer recharge.
 - TCEQ may authorize the appropriation for ASR if it determines the water is not needed to meet downstream or freshwater inflow needs.
 - Water right holders may apply to remove authorization for storage provided that the diverted water will be stored in an ASR project for later retrieval and use as authorized by the original water right.
 - Applications are exempt from notice and hearing requirements and may not be referred to SOAH.
 - TCEQ has exclusive jurisdiction over Class V injection wells. Notice and comment are required for general permits.

- **HB 722 (Larson)** – *Relating to the development of brackish groundwater*
 - Amends Chapter 36 of the Water Code
 - Allows a GCD over a designated “brackish groundwater production zone” (BGPZ) to adopt rules to govern the issuance of permits on its own or by petition
 - Includes required rules related to permit term, monitoring, etc.
 - The authorized BGPZ production is in addition to the amount of managed available groundwater.

- **HB 1052 (Larson)** – *Relating to the authority of the TWDB to use the state participation account of the water development fund to provide financial assistance for the development of certain facilities*
 - Amends Chapter 16 of the Water Code
 - For the development of regional/interregional projects for reservoirs and stormwater retention basins, facilities to transmit and treat water, treatment works, and interregional water supply projects. Interregional water projects must receive at least 50% of the fund.
 - Allows TWDB to use State Participation Account II to fund desalination or ASR facilities. It does not have to find the facility cannot be reasonably financed by local interests without state participation or if the facility contemplates the optimum regional development.

- **HB 1066 (Ashby)** – *Relating to extensions of an expired permit for the transfer of groundwater from a groundwater conservation district*
 - Amends Chapter 36 Water Code re: export permits
 - Requires a GCD to extend a permit to a term no shorter than the term related operating permit, and extended for each additional term of its related operating permit.
 - Renewed permits are subject to the conditions in the original permit.
 - Approval/denial of an extension is based only on rules that were in effect at the time the application was submitted.

- **HB 1964 (Ashby)** – *Relating to the procedure for action on certain applications for an amendment to a water right* [Effective as of 6/10/19]
 - Amends Chapter 11 of the Water Code
 - Exempts an application for an amendment to a water right from notice, hearing, or technical review
 - TCEQ may not refer an application to SOAH if it finds the application (1) adds a purpose of use that does not substantially alter the nature of the right, (2) adds a place of use located in the same basin, or (3) changes the point of diversion provided certain circumstances.
 - Applies to an application filed on or after, or is pending as of 6/10/19

- **HB 2771 (Lozano)** – *Relating to the authority of the TCEQ to issue permits for the discharge into water in this state of produced water, hydrostatic water, and gas plant effluent resulting from certain oil and gas activities.*
 - Amends Chapter 26 of the Water Code
 - Reassigns RRC's authority to issue permits for discharge of produced water, hydrostatic test water, and gas plant effluent to the TCEQ, on delegation to TCEQ of NPDES authority for those discharges.

- **SB 619 (Birdwell)** – *Relating to the sunset review process and certain governmental entities subject to the process* Upper Guadalupe River Authority extended to 2023.
 - Angelina and Neches River Authority, Lower Neches Valley Authority, Sabine River Authority, Trinity River Authority, PUC, and OPUC extended to 2025.

- **SB 911 (Hinojosa)** – *Relating to the supervision of water districts by the TCEQ*
 - Amends Chapters 12 and 49 of the Water Code
 - Gives TCEQ authority to inquire into the qualifications of officers and directors of any district or authority, instead of their “competence, fitness, and reputation.”
 - The executive director can request additional information after reviewing a district’s audit report, investigate a district’s financial records, and conduct an on-site visit.



Legislation – Water Utilities

- **HB 2590 (Biedermann)** – *Relating to the administration, powers, and duties of a municipal utility district*
 - Amends Chapter 42 of the Local Gov't Code, Chapters 49 and 54 of the Water Code
 - Districts providing potable water or sewer services or facilities may have fire departments. (Previously limited to service to household users)
 - Expands criteria for the appointment of temporary directors.
 - Requires the governing body of a converting district to hold a hearing on conversion and publish notice in a newspaper.
 - Any district seeking to create a MUD can petition TCEQ for authority for certain actions, such as road powers.

- **HB 3142 (Guillen)** –*Relating to TCEQ reminders to public drinking water supply system operators regarding reporting requirements*
 - Amends Chapter 341 of the Health & Safety Code
 - TCEQ must establish a system to provide automatic reminders about regular reporting requirements
 - The automatic reminder is a courtesy and public drinking water supply system operators are always responsible for complying with reporting requirements

- **HB 3339 (Dominguez)** – *Relating to requirements for programs of water conservation and water conservation plans*
 - Amends Water Code Chapters 15, 16, & 17 to require political subdivisions or WSCs to include water conservation plan in application for financial assistance to TWDB
 - Plan must incorporate certain practices, techniques, and technology; address local conditions; and include five- and ten-year targets for water savings. Also provides for discretionary elements an applicant may include in the plan and provides exceptions to plan requirement.

- **HB 3542 (Phelan)** – *Relating to the provision of water and sewer services by certain retail public utilities*
 - Amends Chapter 13 of the Water Cod to require a utility that provides retail water or sewer service through less than 10,000 taps or connections to report its financial, managerial, and technical capacity to the PUC within three years of violating certain TCEQ orders.
 - Provides the process and triggers for the temporary management of such violators.
 - Outlines the process to determine the fair market value of a utility, which includes appraisals by three utility valuation experts from a list maintained by the PUC.

- **HB 3552 (Sheffield)** – *Relating to certain notice requirements regarding the fluoridation of water supply system*
 - Amends Chapter 341 of the Health & Safety Code
 - Prohibits a public water supply system that furnishes drinking water with added fluoride from permanently terminating the fluoridation of the water unless it provides written notice to its customers and the commission at least 60 days before termination.

- **SB 520 (Campbell)** – *Relating to the storage and recovery of water in a portion of the Edwards Aquifer*
 - A political subdivision or MOU causing artificial recharge of a portion of the Aquifer that has groundwater with a TDS concentration higher than 5,000 mg/L is entitled to withdraw the measured amount of water actually injected or artificially recharged.
 - EAA may only contract for injection or artificial recharge under certain conditions (NBU).
 - TCEQ may not authorize an injection well that transects or terminates in the Edwards Aquifer except in some cases.

- **SB 530 (Birdwell)** – *Relating to civil and administrative penalties assessed or imposed for violations of laws protecting drinking water, public water supplies, and bodies of water*
 - Amends Chapter 341 of the Health & Safety Code
 - The civil penalty for violating Subchapter C (sanitary standards of drinking water, protection of public water supplies, and bodies of water) range from \$50 to \$5,000. (Previously capped at \$1,000 per violation).
 - Penalties for violating Subchapter C apply to an action brought on or after 9/1/19, regardless of when the violation occurred. Penalties for violating TCEQ rules or orders only apply to violations that occur after 9/1/19.

- **SB 700 (Nichols)** – *Relating to the regulation of certain classes of retail public water utilities*
 - Amends Chapters 5 and 13 of the Water Code
 - Redefines Class B & C utilities and creates a Class D for fewer than 500 connections.
 - Makes changes to rate setting provisions for RPU's, essentially not applicable to municipal corporations, water supply or sewer services corporations, or political subdivisions except affected counties.
 - Allows the PUC to issue emergency orders and establish reasonable compensation for the emergency interconnection.
 - Applies to applications for a rate change or adjustment, as well as those for CCN amendments.

- **SB 1358 (Hancock)** – *Relating to procedures for imposing certain administrative penalties or disgorgement orders by the PUC*
 - Amends Chapter 15 of the Utilities Code
 - PUC may now send notice by regular or certified mail
 - PUC may now order a hearing if the person accepts the executive director's determination and recommendation, or if the person fails to timely respond
 - PUC must refer the matter to SOAH for a hearing and give notice of the referral to the requestor

- **SB 1512 (Flores)** – *Relating to payment of costs related to the relocation of certain political subdivision utility facilities for state highway projects* [Effective as of 5/28/19]
 - Amends Chapter 203 of the Transportation Code
 - The State will fund the relocation of a utility facility required by improvement of state highways if the Texas Transportation Commission determines that: (1) the utility is owned/operated by a political subdivision, (2) it cannot afford the relocation, and (3) it is ineligible for a state infrastructure bank loan.
 - Funding is capped at \$10 million in any fiscal year.

- **SB 2272 (Nichols)** – *Relating to the procedure for amending or revoking certificates of public convenience and necessity issued to certain water utilities*
 - Amends Chapter 13 of the Water Code to create limits on landowner ability to contest involuntary certification.
 - Prohibits a new RPU from rendering service in a decertified area unless just and adequate compensation has been paid to the decertified RPU.
 - Provides the rules and procedures for streamlined expedited release by a landowner.

- **SJR 79 (Lucio)** – *Proposing a constitutional amendment providing for the issuance of additional general obligation bonds by the TWDB to provide financial assistance for the development of certain projects in economically distressed areas*
 - Would allow TWDB to issue additional general obligation bonds for the economically distressed areas program account of the Texas Water Development Fund II, in an aggregate amount less than \$200 million, to develop water supply and sewer service projects.

The background features a series of overlapping, semi-transparent geometric shapes. The top half is dominated by various shades of green, ranging from light lime to a darker, more saturated green. The bottom half is primarily a dark charcoal grey, with some lighter grey shapes overlapping it. The overall effect is a modern, abstract design.

Unsuccessful Bills

Vetoed Bills

- **HB 1059 (Lucio III)** - *Relating to a biennial report on stormwater infrastructure in this state*
 - Would have required TCEQ to appoint a Green Stormwater Infrastructure and Low Impact Development Report Group to report on the use of “green stormwater infrastructure” and “low impact development”, which would mean practices that use natural processes that treat or manage stormwater and those that protect water quality and associated habitat.
- **HB 1806 (King)** - *Relating to the use of water withdrawn from the Edwards Aquifer by certain entities*
 - Would have provided new exceptions to the rule that water withdrawn from the Edwards Aquifer must be within the boundaries of the EAA for a retail public utility and a municipally owned utility owned by SAWS.
- **HB 3022 (Miller)** – *Relating to emergency warning systems operated by municipalities and counties*
 - Would have required the Texas Department of Public Safety to disclose contact information of political subdivision residents who consented to the disclosure to participate in the emergency warning system.
- **SB 1575 (Alvarado)** – *Relating to governmental immunity for and adjudication of claims arising from a local governmental entity’s disaster recovery contract*
 - Would have given municipalities governmental immunity to suit and from liability for a cause of action arising from a declaration of disaster for an unspecified period.

Failed to Pass

- **HB 1506 (Perez)** - *Relating to authorizing a regulatory authority to establish reduced water and sewer utility rates funded by donations for the benefit of certain low-income customers.*
- **HB 1868 (Lozano)** - *Relating to the creation of the Texas Rural Water Advisory Council.*
- **SB 2026 (Perry)** - *Relating to regulation of the production of retail public utility wells by a groundwater conservation district.*
- **HB 26 (Metcalf)** - *Relating to the notification of affected persons of certain releases of water from certain dams.*



Questions?

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