

81st Regular Session Ends with Most Some Disappo State Employees



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A Roller Coaster Session

The Regular Session of the 81st Texas Legislature adjourned *Sine Die* on Monday, June 1. As is generally the case, the most important factor determining how TPEA fared on its legislative agenda was the relative fiscal health of the state.

Because of abrupt changes in the state's fiscal outlook during the 2009 session, it can best be described as a roller coaster. "Going into the session, we had high hopes," said TPEA Executive Director Gary Anderson, "but those hopes came crashing down with the bleak revenue forecast in the Comptroller's January Biennial Revenue Estimate and raised the specter of possible layoffs and benefit cuts, like in 2003. Then, with passage of the federal stimulus package, our hopes were raised again. In the end we made some progress on pay for TDCJ correctional staff, and we were able to salvage smaller compensation enhancements for most other employees and

retirees, but not at the levels TPEA thought were necessary."

On virtually every other issue, TPEA was successful. First and foremost, TPEA was able to get sufficient new funding, around \$280 million in additional funds, to maintain state employee and retiree health benefits for another two years. TPEA also successfully supported major legislation that should put the ERS retirement fund back on course towards actuarial soundness. The ERS reform legislation, HB 2559 by Representative Vicki Truitt and Senator Robert Duncan, will require employees to contribute more towards their retirement but will completely "grandfather" all current employees from all retirement benefit design changes.

TPEA was also able to defeat most of the bills it opposed, in particular legislation that would have established an option for Health Savings Accounts under ERS. The association also successfully supported an effort that should result in ERS offering



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a full fledged smoking cessation benefit that is part of our efforts to promote wellness and help reduce future health care costs.

Even with these other successes, the failure to win more significant pay raises for most employees, and a larger supplemental payment for state retirees, are major disappointments. More specific discussion of each of these issues is included below.

Five Agencies Will Need Sunset Fix

The legislature functioned fairly harmoniously during most of the session. However, the process was thrown off course near the session's end when prolonged debate caused by a partisan dispute killed many bills. This delay and the failure to reach agreement in a timely fashion on several Sunset bills resulted in five agencies not being reauthorized. Normally, the legislature passes "safety net" legislation to safeguard agencies so that they are not inadvertently allowed to "sunset." Unfortunately, the safety net legislation, HB 1959, was itself killed when a procedural time limit expired before the conference committee report could be considered. A

final effort to fix the problem by the House was rebuffed by the Senate.

The net result of all this is an unprecedented situation where two major state agencies, the Texas Department of Transportation (TxDOT) and the Texas Department of Insurance (TDI), as well as three smaller agencies, the Texas Racing Commission, the Office of Public Insurance Counsel, and the Texas State Affordable Housing Corporation, are slated to go out of existence by September of 2010.

Obviously, this is a matter of grave concern to employees at these affected agencies. TPEA's understanding of the legal issues involved suggests that the only way to avoid having these agencies go out of existence is for Governor Perry to call a special session and for the legislature to either adopt legislation to address the policy issues raised during the recent legislative session, or extend the agencies' Sunset dates to 2011 or beyond. The Governor and the state's legislative leadership have all made positive statements that this problem will be addressed and the affected agencies will continue to carry out

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their functions. TPEA stands ready to assist in any way to resolve this problem.

(As this issue was going to press Governor Perry called a special session, but with no specific date announced.)

Additional Funding to Maintain Employee and Retiree Health Benefits

TPEA has been working successfully to stabilize and preserve our health benefit plan for state employees and retirees, especially since all the benefit changes and cost increases that were imposed in 2003. This session TPEA had two goals: first, to maintain the premium

contribution structure with the state paying the full cost for eligible employees and retirees and half the cost for spouses, children and other dependents; and second, to avoid increases in co-pays, deductibles and other out-of-pocket costs. TPEA was able to work with key legislators to achieve both of these goals in SB 1.

The legislature appropriated \$280 million in new funds to maintain the premium contribution structure currently in place, and current projections are that no new or increased co-payments, coinsurance or deductibles should be necessary over the 2010-2011 biennium. Because overall health care costs have been increasing, costs for the 50 percent share of health insurance will increase. Health insurance premium rates for HealthSelect and participating HMOs for the plan year beginning September 1, 2009 are available on the ERS web site. State employees in parts of West Texas and the Panhandle should also be aware they will no longer have an HMO option. First Care will no longer be a participating HMO in 78 counties in areas around Abilene, Amarillo and Lubbock. Conversely, Scott & White will extend its HMO coverage area to 16 additional counties including Tom Green County.

TPEA was also pleased that language was added to HB 2559 that will enable ERS to provide a comprehensive smoking cessation benefit. Senator Judith Zaffirini (D-Laredo) led the initial effort to rectify this glaring shortcoming in ERS coverage. In effect, state employees and their families were being treated like second class citizens. Unlike participants in other state-funded health plans at the University of Texas, Texas A&M and the Teacher Retirement System, ERS plan members have been denied a comprehensive smoking cessation benefit.

TPEA is grateful for the work of key legislators in providing sufficient funding to maintain current health benefits for employees and retirees. Key champions for our health benefits included House Appropriations Chair Jim Pitts (R-Waxahachie), Representative John Otto (R-Dayton), Senator Robert Duncan

(R-Lubbock), Senator Juan "Chuy" Hinojosa (D-Corpus Christi-McAllen), and Senator Royce West (D-Dallas).

State Employee Pay Challenging

The most difficult challenge TPEA faces every session is gaining sufficient legislative support for adequate pay raises for all state employees. This session was no exception, and our task was made more difficult by the state's deteriorating fiscal situation and fear of a looming fiscal crisis.

TPEA had requested targeted pay increases for the highest turnover occupational categories where data from the State Auditor's Office showed the most significant pay disparities, primarily among TDCJ correctional employees. TPEA's efforts in advocating for a sizeable pay raise for TDCJ correctional staff were aided immensely by the leadership of TDCJ Executive Director Brad Livingston who advocated strongly for better pay for his employees.

In addition, TPEA proposed that all other employees who did not receive targeted pay increases would be eligible for a one-time \$1000 payment in September 2009, and a second year pay raise of 3 percent.

In the end, because of the state's fiscal problems, the legislature funded the targeted TDCJ pay raises at a reduced level. SB 1 includes 3.5 percent pay raises in both FY 2010 and FY 2011 for TDCJ uniformed security staff, unit assigned employees, and parole officers. TYC juvenile correctional staff will also receive the same 3.5 percent pay raises. State law enforcement personnel on Salary Schedule C will also receive raises, which will differ depending on their tenure. Pay raises for some TPWD employees will be contingent on approval of agency-approved fees.

Late in the session TPEA was able to salvage additional compensation for most other state employees after SB 1 had already been decided. TPEA convinced legislative leaders to find \$88 million to pay for a one-time \$800 "retention payment" for most state employees who won't receive targeted pay raises. This was added to the Supplemental Appropriations bill (HB 4586) by Senator Steve Ogden (R-Bryan). TPEA appreciates the efforts of Senator Robert Duncan (R-Lubbock), Senator Tommy Williams (R-The Woodlands), House Appropriations Chair Jim Pitts (R-Waxahachie), and the office of House Speaker Joe Straus (R-San Antonio) in working to get funding approval for the \$800 retention payment. The \$800 retention payment will be paid in August to state employees (not including employees of state institutions of higher education) who earn less than \$100,000 annually and are continuously employed with the state from March 31, 2009 to August 1, 2009.

Hopeful About Small Benefit Enhancement for State Retirees

TPEA's other primary legislative goal for the 2009 session was to find a way to provide some type of benefit enhancement for state retirees. ERS retirees have not received any type of

benefit enhancement since a 13th check was issued in January of 2002. However, under current law, ERS cannot provide for a 13th check or any other retirement benefit enhancement when the retirement fund is not actuarially sound. TPEA asked the legislature to make a direct appropriation for a \$1000 supplemental payment for ERS annuitants in SB 1, which had never been done before.

Ultimately the legislature approved a one-time \$500 supplemental payment for both ERS and TRS retirees, subject to the Attorney General finding that such payments would not violate Article 3, Section 44 of the Texas Constitution. In the event the Attorney General finds that such a payment is not constitutional, the funds will be used to increase the state contribution rate for ERS, from the current 6.45 percent to 6.95 percent. While TPEA is disappointed in the amount of the one time \$500 payment, winning approval of a direct appropriation on behalf of retirees is a landmark achievement. TPEA will be filing a legal brief with the Attorney General to provide legal support for the constitutionality of the proposed \$500 supplemental payment. We will update retirees on the time line for this decision as it becomes known.

HB 2559 Passed - Changes Needed to Stabilize ERS Retirement Fund

The final major goal of TPEA's legislative agenda was to find a way to return the ERS retirement fund to actuarial soundness. TPEA has been studying the growing problems with the retirement fund for several years. It became clear that, unless significant corrective action was taken, state retirees were unlikely to ever again receive any type of post-retirement benefit enhancement, and ERS made it clear that investment returns alone were not going to be sufficient to close the funding gap. Without major changes, the long term financial viability of the retirement fund would be in danger. At the most basic level, there are only two ways to improve the retirement fund's actuarial condition: either someone has to contribute more, or benefits will need to be changed. In the end, HB 2559 did a little of both.

The two biggest challenges in fashioning the provisions of HB 2559 were how to be fair to current employees, and how to make sure that retirement benefits would remain attractive for future employees. TPEA is pleased to report that the final version of HB 2559 addressed each of these issues. This was due in large part to the input received from state employees based on their responses to TPEA's statewide survey, conducted at the beginning of this legislative session. Legislators involved with the drafting of the legislation relied heavily on survey results showing overwhelming support by employees to raise the employee contribution rate to no more than 6.5% to preserve the viability of the current retirement system. Additionally, the legislature agreed to TPEA's proposals to make all retirement benefit design changes prospective, effectively grandfathering current employees. Employee participation in the survey by both TPEA and non-TPEA members was a critical factor in the success of this legislation.

The retirement-related provisions of HB 2559, as passed by the Senate, include:

- ⊛ All current state employees and non-contributing ERS members will be completely grandfathered for all retirement benefit design changes. New employees hired after September 1, 2009 will be subject to a new normal retirement age of 60 (or age 55 for LECOSRF members), although members will be able to retire after meeting the rule of 80 with a five percent annuity reduction for each year under 60, up to 5 years. Annuities for new employees will be calculated based on the highest 48 months pay rather than the highest 36 months. New employees will not be able to use accrued sick and annual leave to meet retirement eligibility. Additionally, vesting for retirement benefits will require 10 years rather than the current 5, so a new employee will be able to retire at age 65 with ten years service, as is currently required to qualify for retiree health insurance.
- ⊛ The employee contribution rate for ERS will be tied to the state contribution rate, up to 6.5 percent. Employees currently contribute 6 percent and the state has been contributing 6.45 percent since 2005. The state contribution rate to ERS is determined in the General Appropriations Act, and a statutory requirement to require the state to contribute at a higher rate is not enforceable. Under HB 2559, employees will contribute more than 6 percent only if the state contributes at a higher rate, up to 6.5 percent. The contribution rate for the next two years will likely be 6.45 percent. Law enforcement and custodial officers who participate in the LECOSRF plan will also be required to contribute an additional half percent to help support the enhanced retirement benefits under this fund.
- ⊛ Employees who retire and return to service on May 31, 2009 or later will be required to wait 90 days to return to service to assure *bona fide* separation. Agencies that hire a return to service retiree after September 1, 2009 will be required to pay a surcharge equivalent to the state contribution rate to the ERS retirement fund.

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Major changes to employee benefits are always difficult, but particularly so when there are no short term benefits to anyone involved. TPEA appreciates the hard work of Senator Robert Duncan and Representative Vicki Truitt in successfully moving this legislation through the process. TPEA also appreciates the efforts of the Department of Public Safety Officers Association (DPSOA) in partnering with us on this effort and for having the courage to take a long range view of the importance of maintaining a viable retirement fund.