

Session Preview
88th Texas Legislature
January 10, 2023

Executive Summary

- The Legislature gavels back in today, Tuesday, January 10. For Governor Greg Abbott and Lt. Governor Dan Patrick, the Session will mark the beginning of their third terms in office after each secured double-digit electoral victories in November. Members of the Texas House are similarly poised to give current Speaker Dade Phelan (R—Beaumont) a second term at the Dias.
- At center stage will be the State budget, with an unprecedented \$33 billion surplus. We expect property tax relief, border security and infrastructure to compete for the largest portion of funding. For reasons we explain below, the appropriations process may be much more complicated than a historic surplus would suggest.
- The electric grid remains a focal point for some legislative leaders. While Governor Abbott considers previous reforms sufficient, Lt. Governor Patrick designated grid reliability a major legislative priority. Meanwhile, the Public Utility Commission is entering “Phase 2” of its ERCOT market redesign efforts, and both the PUC and ERCOT remain under review by the Sunset Advisory Commission.
- Mental health and school safety will likely round out the major issues this session. Between the toll of the pandemic and the recent Uvalde school shooting, a renewed focus on mental health—especially that of Texas youth—is likely to permeate policy discussions. And the Legislature is keen on making significant investments in school safety, although questions remain on what specific steps will be taken and the mechanisms by which those initiatives will be funded.

Key Issues

1. What to do with a record budget surplus ... and sky-rocketing property taxes.

The biennial budget is a key issue in any Legislative Session, but this year’s budgetary process looks to be an unprecedented one. Back in November, Comptroller Glenn Hegar projected Texas would end this two-year budget cycle with more than \$27 billion in the bank – a historic surplus. On Monday, Hegar announced that the **budget surplus had likely grown to \$33 billion**. The surplus comes with a couple of caveats. The first is that much of the growth is due to inflation, meaning some of the additional funding will be needed just to fund on going government activities. Second, Hegar has joined the chorus of voices **suggesting we are on the precipice of a recession – although he predicted it would be shallow and short**. Last, the Texas Constitution has several limits on the ability of appropriators to spend all that money. A key issue to watch this Session is how these spending limits – which often take super-majorities to bust – influence the budget process.

The surplus has been anticipated for some time, and so Capitol watchers already know a great deal about where leadership stands on utilizing the extra revenue. **Governor Abbott campaigned heavily on property tax relief and promised to “use at least half of the surplus” toward that end. The Governor is maintaining his strong stance on border security, [delivering a hand written letter of demands to President Biden last week.](#)** Both issues require money to address – lots of money.

Lt. Governor Patrick likewise campaigned on property tax relief but has diverged from Governor Abbott on the exact amount to spend. They have also differed on the best way to address rising property taxes. While Abbott has traditionally preferred property tax compression, **Patrick has favored an increased homestead exemption. The Lt. Governor’s additional priorities are building additional natural gas generation and border security. [Patrick also cautioned against spending all the money.](#)**

Speaker Phelan has suggested the State use the extra money to invest in infrastructure. “I want to remind everybody it’s in our coffers because of inflation, because of pain,” [Phelan told a transportation industry group in November.](#)

Phelan has also cautioned against using the surplus for property tax relief because it could create a perpetual funding obligation for the state. “I’ve got elected officials saying we need to spend all the new revenue on property tax relief. Let me just remind you, none of this money came from property taxes. It all came from sales tax,” said Phelan. The Speaker has argued that offsetting property tax revenues with sales tax revenues—the largest source of the surplus—will create future budget woes in years where those revenues are down.

The Comptroller had his own take at [yesterday’s announcement](#), suggesting the excess money should be spent on border security, salary increases for State employees, and investment in infrastructures. Hegar also announced that the State’s Rainy Day Fund was likely to exceed its constitutional cap in the next two years, presaging requests to modify the Rainy Day Fund’s structure. **The Comptroller’s announcement cautioned legislators against spending too freely, suggesting that a recession loomed and that a repeat of excess revenue was unlikely.**

What to Watch: Sometimes budget surpluses create a more complicated environment than a shortfall. Appropriators will be flooded with a deluge of requests, likely far outnumbering the surplus funds. Their job will be made more difficult by multiple constitutional limits on spending and the specter of a recession looming. **These factors suggest a difficult budget process – which is already underway – despite the historic surplus.**

Related Issues: Because K-12 public schools in Texas are funded largely through property taxes, any attempts at property tax relief will necessarily implicate **public education funding**. Not only that, but many Republicans have expressed strong support for adopting some form of **school choice** – whether through a voucher program or educational service accounts. Thus, the push for property tax relief coupled with growing Republican support for school choice—Governor Abbott is in full support of the policy—could mean major policy changes for public education. Lastly, **border security** continues to be a crisis and we expect it to continue to be a big focus of the Legislature.

Notable Pre-Filed Bills (the appropriations bills in each chamber are not pre-filed)

- HB 38 (Murr) — Would eliminate property taxes for school maintenance and organization (the “M&O” portion of property taxes).
- HB 32 (Capriglione) — Limits the amount an appraisal district can raise a single-family home’s value year-over-year.
- HB 379 (Bell) — Directs the Comptroller to send half of any budget surplus to the Texas Education Agency to provide property tax relief.
- Multiple Bills — Would adopt the average enrollment method for use in calculating public school funding (as opposed to the current daily attendance method).

2. Electric Grid Reliability & ERCOT Market Redesign.

Even after receiving significant attention during the last Regular Session in 2021—the Legislature passed thirteen bills on the subject—the electric grid remains a significant focal point after several tight days this past summer. In the interim, the Public Utility Commission has been wading through a slew of rulemaking and undertaking a total market redesign. The self-described “Phase 1” of planned market reforms has largely been completed. “Phase 2” has yet to begin in earnest but is likely to include more significant reforms aimed at incentivizing development of dispatchable generation.

Just last month, the ERCOT market faced its most significant winter test since Winter Storm Uri. Temperatures across Texas dipped into the single digits and windchills in parts of the State dipped well below freezing. “The ERCOT grid remains stable and reliable with plenty of extra capacity,” Governor Abbott tweeted during the cold snap.

While Governor Abbott has signaled that the grid needs no more legislative action, Lt. Governor Patrick made the grid a major legislative priority. Specifically, Patrick has called for “adding more natural gas plants to the grid.” The details of his plan remain unknown, but the Senate will likely pass some bills aimed at market reforms. **A looming question – even two years after Winter Storm Uri – is how much of ERCOT’s wholesale market approach will be jettisoned in favor of something more akin to a capacity market (i.e., consumers pay extra to have idle power standing by).**

[ERCOT’s Market Monitor is also suggesting a wait-and-see approach.](#) The independent monitor commented that tweaks to the market during the interim have done enough to incentivize additional dispatchable generation and reiterated their continued belief “in the effectiveness of the energy-only market.”

What to Watch: The PUC and ERCOT are both under Sunset Advisory Commission review. Those bills are sure to see some action when they get to the floor. Notably, Sunset staff recommended a significant increase in personnel funding for the PUC. Given their broad subject matter, sunset bills often have the potential to act like legislative Christmas trees – where legislators and stakeholders desperately seek to hang their special interests. The natural gas

industry could receive some additional attention as well. In late December, Governor Abbott [called on the Attorney General and the Railroad Commission to investigate Atmos Energy's service interruptions](#) during the recent freeze.

Related Issues: Many energy developers—especially wind and solar—utilize the economic development incentives found in Chapter 313 of the Texas Tax Code. That tool expired last year and has not been renewed. **Property tax abatements are a key tool in Texas' economic incentive package given the relatively high property taxes.** The issue will play a small but potent role this Session as policymakers look at renewing Chapter 313 and other reforms to economic development policy. ERCOT is also facing a slew of lawsuits, to which they have responded they are immune from suit under a constitutional doctrine known as sovereign immunity. Just yesterday, **the Supreme Court of Texas heard arguments about whether such lawsuits against ERCOT can proceed.** That decision is likely to be returned after the Legislative Session ends.

Notable Pre-Filed Bills:

- HB 578 & 585 (Raymond) — Would require adoption of a comprehensive plan to protect oil & gas infrastructure (578) as well as water treatment infrastructure (585).
- SB 330 (Hall) — Relating to grid resilience and creation of a Texas Grid Security Commission.
- SB 31 (Zaffirini) — Allowing utilities within ERCOT to connect to grids outside of ERCOT.

3. Mental Health.

Demand for mental health services across the State has increased exponentially in the wake of the pandemic and recent school shootings. Hospitals are quickly working on expanding mental health services while universities and schools are finding ways to fund and implement new initiatives. We also expect the Texas Education Agency to request additional funds for training mental health professionals.

Included in Lt. Governor Patrick's top legislative priorities is "building much needed mental health care hospitals across Texas." Governor Abbott, meanwhile, has reallocated current budget dollars toward mental health initiatives and is expected to seek new funding this Session. Speaker Phelan likewise made interim requests for spending on mental health initiatives and is expected to be a strong proponent of increased spending.

What to Watch: We expect the mental health crisis to prompt yet another push by Texas Democrats to expand Medicaid, although we anticipate that such a push will likely fall short again. Additional focus will be on the State's 1115 Medicaid Waiver – a crucial part of the Medicaid program that supports the State's hospital safety net. The federal government continues to question aspects of how the State funds its portion of the partnership with the feds.

Related Issues: In light of the Uvalde shooting and the pandemic's effects on teens and children, the mental health conversation will be closely linked to public education and school safety.

Expect to see a significant portion of mental health funding aimed at Texas youth as the State increasingly comes to grips with the longer-term effects of school closures.

Notable Pre-Filed Bills:

- HB 498 (Meza) — Addresses bullying and harassment policies in public schools.
- SB 245 (Perry) — Establishes telehealth mental health services in public schools and addresses disciplinary measures for students exhibiting disruptive or disorderly behavior.
- SB 112 & 113 (Menendez) — Would make mental health required curriculum (112) and require on campus mental health services in schools, and make those Medicaid-reimbursable (113)

4. School Safety.

The tragedy in Uvalde in May 2022 became a central issue in the recent election and will undoubtedly lead to legislative action in the 88th. After the shooting, all three legislative leaders sought to re-direct funds toward school safety initiatives. Some possible initiatives include installing bulletproof glass in classrooms, increasing funding for school police, adding mechanisms to secure doors and other response technology such as panic buttons. The Texas Education Agency is set to ask for an exceptional budget item related to improving and upgrading school security.

What to Watch: Both sides of the aisle are sure to split on who gets to decide how to spend any money flowing to local ISDs and municipalities. In addition, Democrats are sure to push for gun control measures, but the policy is not likely to get far. And Republicans may re-ignite a push for allowing teachers to carry guns in schools.

Related Issues: School safety is as much a local police issue as it is a public education one. Cities and counties may push against property tax caps or reductions and cite school safety as a reason.

Notable Pre-Filed Bills:

- HB 36 (Talarico) — Relating to the membership of a public school's threat assessment and safe and supportive school team and committee and the permissible uses of the school safety allotment under the school finance system.
- HB 669 (Thierry) — Allows public and open charter schools to use certain funds to purchase panic buttons.