TEXAS LEGISLATIVE HISTORY AND STATUTORY CONSTRUCTION

RULES, TOOLS AND THINGS TO THINK ABOUT
All things you’ve learned so far about federal legislative process

Our Job to Texas-ize it
1881 - THE 1851 CAPITOL BURNS TO THE GROUND.
WHAT GRINDS THE REPRESENTATIVE’S GEARS

BIGGEST MYTHS AND MISCONCEPTIONS ABOUT THE TEXAS LEGISLATURE
MEET A LEGISLATOR

Why UH Law School?

The Lesson of Mediation Training
BAD JOB INTERVIEW QUESTIONS

WHAT IS THE BEST ATTRIBUTE AS A LAWYER THAT HAS PREPARED YOU TO BE A LEGISLATOR?

WHAT IS THE WORST?
THE FIVE FUNCTIONS OF A LAWYER

1. “WISE COUNSELOR TO ALL MANNER OF MEN IN THE VARIED CRISIS OF THEIR LIVES WHEN THEY MOST NEED DISINTERESTED ADVICE”

2. A SKILLED ADVOCATE

3. DO HIS PART TO IMPROVE THE PROFESSION, THE COURTS, AND THE LAW

4. ACT AS AN INTELLIGENT, UNSELFISH LEADER OF PUBLIC OPINION

5. TO ANSWER THE CALL OF PUBLIC SERVICE WHEN IT COMES
II. THE SIX CIRCLES THEORY OF EFFECTIVE ADVOCACY ........................................... 787
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III. THE LEGISLATIVE LAWYER

A. The Naming of the Legislative Lawyer

B. The Skills of the Legislative Lawyer
   1. Assess the Problem/Issue
   2. Research the Problem/Issue
   3. Propose Solutions and Approaches to the Problem/Issue
   4. Draft Materials
   5. Oral Presentation and Negotiation

C. The Utility of a Legislative Lawyer
MYTH OF LEGISLATURE AS A MONOLITH

Monolithic Adjacent R
Districts-School Issues
**District Profile**
**TEXAS HOUSE DISTRICT 49**
**ACS 2010-2014 Estimates**

### SELECTED EDUCATION CHARACTERISTICS

<table>
<thead>
<tr>
<th></th>
<th>District estimate</th>
<th>District percent</th>
<th>State 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population age 3 and over enrolled in school</td>
<td>37,408</td>
<td>7.36%</td>
<td>6.3%</td>
</tr>
<tr>
<td>School status</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In preschool (public and private)</td>
<td>2,774</td>
<td>3.8%</td>
<td>6.3%</td>
</tr>
<tr>
<td>In kindergarten, elementary, middle, or high school (public and private)</td>
<td>14,357</td>
<td>21.0%</td>
<td>69.0%</td>
</tr>
<tr>
<td>In preschool through 12th grade (public or non)</td>
<td>13,262</td>
<td>21.0%</td>
<td>68.4%</td>
</tr>
<tr>
<td>In college, graduate, or professional school</td>
<td>40,877</td>
<td>71.2%</td>
<td>24.5%</td>
</tr>
</tbody>
</table>

### Population age 25 and over

<table>
<thead>
<tr>
<th>Educational attainment</th>
<th>District estimate</th>
<th>District percent</th>
<th>State 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor's degree or higher</td>
<td>58,955</td>
<td>55.2%</td>
<td>27.1%</td>
</tr>
<tr>
<td>Less than high school graduate</td>
<td>8,880</td>
<td>8.2%</td>
<td>18.4%</td>
</tr>
</tbody>
</table>

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**District Profile**
**TEXAS HOUSE DISTRICT 51**
**ACS 2010-2014 Estimates**

### SELECTED EDUCATION CHARACTERISTICS

<table>
<thead>
<tr>
<th></th>
<th>District estimate</th>
<th>District percent</th>
<th>State 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population age 3 and over enrolled in school</td>
<td>56,161</td>
<td>7.36%</td>
<td>6.3%</td>
</tr>
<tr>
<td>School status</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In preschool (public and private)</td>
<td>3,264</td>
<td>5.8%</td>
<td>6.3%</td>
</tr>
<tr>
<td>In kindergarten, elementary, middle, or high school (public and private)</td>
<td>33,189</td>
<td>59.1%</td>
<td>69.0%</td>
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<tr>
<td>In preschool through 12th grade (public or non)</td>
<td>34,554</td>
<td>61.3%</td>
<td>68.4%</td>
</tr>
<tr>
<td>In college, graduate, or professional school</td>
<td>19,708</td>
<td>35.5%</td>
<td>24.9%</td>
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</table>

### Population age 25 and over

<table>
<thead>
<tr>
<th>Educational attainment</th>
<th>District estimate</th>
<th>District percent</th>
<th>State 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor's degree or higher</td>
<td>113,306</td>
<td>24.9%</td>
<td>27.1%</td>
</tr>
<tr>
<td>Less than high school graduate</td>
<td>31,831</td>
<td>28.3%</td>
<td>18.4%</td>
</tr>
</tbody>
</table>
PREMORTEM - WHY IS THIS LEGISLATIVE ENDEAVOR DOOMED TO FAILURE?

12,096,000 SECONDS

SIGNAL TO NOISE

NUMBERS

IDEA
BILLS TO LAW IN TEXAS
BILLS PASSAGE (FLOWCHART V. PROCESS)

- HAVE A BILL
- INTRO/REFER
- COMM. ACTION
- CALENDAR
- FLOOR ACTION
- 2ND CHAMBER RINSE &REPEAT
- RECONCILE (IF NEEDED)
- EXECUTIVE ACTION
INTRODUCTION

TEDA LEGISLATIVE COUNCIL ARE THE KEEBLER ELVES OF LEGISLATIVE DRAFTING

http://www.tlc.state.tx.us/legal/dm/draftingmanual.pdf#page=156

COOKBOOK TO BILL DRAFTING
THERE ARE A LOT OF RULES (SORT OF)

Article 3, Texas Constitution

Both Houses have Rules governing process

(form follows function)
House Rules & Precedents

- TRCP/TRAP for the legislature
- Chair makes rulings
- Chair’s rulings become precedent—recorded in House Journal
No substantive rulings…

- No ruling on substantive constitutional questions:

  “[C]onstitutional issues on which the chair will rule are procedural and extremely limited in scope. As for more substantive constitutional questions, the chair will continue to exercise restraint and will rely on the availability of redress in the courts to remedy other constitutional infirmities.” 84 H.J. Reg. 3947-48 (Walle point of order on SB 735).
INTRODUCTION AND REFERRAL

• BILL MOVED FROM POSSESSION OF AUTHOR TO CLERK ON TO COMMITTEE

MAJ. DIFF WITH FEDS:
• CAN ONLY GO TO ONE COMMITTEE
• FINAL DECISION MAKER IS PRESIDING OFFICER
COMMITTEE PROCESS

• COMMITTEE WEIGHS BILL, DETERMINES IF TESTIMONY IS NEEDED, TAKES TESTIMONY, MAKES CHANGES TAKES ACTION

• MAJ. DIFF. WITH FEDS
  • TIME COMPRESSION
  • LIMITATIONS ON SCOPE OF CHANGES
  • RULES REGARDING HEARINGS VARY BETWEEN HOUSES
CALENDARING PROCESS

• LEGISLATIVE HOUSE DETERMINES METHOD BY WHICH ALL (OR SOME) OF COMMITTEE SUGGESTIONS ARE HEARD BY CHAMBER

• MAJ. DIFF. WITH FEDS
  • NO FUNCTIONAL EQUIVALENT OF FED CHAMBERS OPERATION ON CALENDARING
  • SPECIAL RULES ARE RARE (BUDGET AND SUNSET)
  • HOUSES DIVIDE METHODS OF ACTION ON CONTESTED AND LOCAL AND UNCONTESTED
  • “2/3RD RULE” AND HOUSE CALENDARS COMMITTEE
FLOOR ACTION

• MEMBERSHIP CONSIDERS PASSAGE, MAKES CHANGES, FINAL VOTE

• MAJ. DIFF. WITH FEDS
  • TIME, PLACE, AND MANNER LESS STRUCTURED
  • ALLOWABLE DEBATE
  • ALLOWABLE AMENDMENTS
RINSE AND REPEAT IN 2\textsuperscript{ND} CHAMBER

- IDENTICAL PROBLEMS TO FEDS: TIME COMPRESSION, EVERYONE THINKS THEY CAN IMPROVE ON YOUR BILL
RECONCILE (IF NECESSARY)

• THREE OPTIONS:
  
  • CONCUR
  • CONFERENCE
  • NO!
    • STRIP AMENDMENTS/DIE
EXECUTIVE ACTION

• VETO WORKS SLIGHTLY DIFFERENT IN TEXAS

• SO DOES VETO OVERRIDE
WHAT ARE THE ODDS?
84 R (OR WHAT YOU CAN DO IN 140 DAYS)
182 ACTORS HAVE 140 DAYS

- 6276 BILLS FILED
- 1323 BILLS PASSED = 21%
- 43 = 3.2%
FY 2014 SCOTEX Stats:

- 792 PFRs filed
- 93 cases added
- 96 disposed—60% reversed, 17% affirmed, 10% mixed
- 45 pending (fewest since 1995)
- Average time to dispose of cases: 155 days
CAN’T WE ALL GET ALONG

• “Entering a final judgment is a core judicial power; it falls within that realm of judicial proceedings ‘so vital to the efficient functioning of a court as to be beyond legislative power.’ Thus, the 45-day time frame provided for in subsection (b) is a constitutionally intolerable imposition on a court's power to enter a final judgment and a violation of separation of powers.”
What to do with 1280 new laws?

• How do you orderly incorporate new measures into existing law in a thoughtful manner that is able to be used?
ORGANIZATION OF TEXAS STATUTES

- TEXAS STATUTES ARE LOCATED IN ONE OF THREE PLACES:
  - SESSION LAWS;
  - TEXAS CIVIL STATUTES; AND
  - 1 OF 27 CODES
SESSION LAWS

- THINK OF THIS AS A TEMP FILE

- SMALL NUMBER OF STATUTES NOT PLACED IN A CODE OR REVISED STATUTES

- MOST WILL BE ASSIGNED ARTICLE NUMBER OF TO A CODE IN THE NEXT INTERIM (“cleanup bills”)
  - (Practice note: some are footnoted in other places; local issues)
CIVIL STATUTES (VERNON’S REVISED TEXAS STATUTES)

• All state statutes in 1925 were revised ("Accountants" (Article 1) to Wreck” (Article 8324))

• The next major revision ("Codification") begins in 1963.
CODES

- LEG. CHARGES TEXAS LEGISLATIVE COUNCIL TO EXECUTE A “PERMANENT STATUTORY REVISION PROGRAM”

- SECTION 323.007, GOVERNMENT CODE
When the legislative council’s statutory revision program is completed, all permanent statutes will be incorporated into the following 27 codes:

Agriculture Code  
Alcoholic Beverage Code  
Business & Commerce Code  
Business Organizations Code  
Civil Practice and Remedies Code  
Criminal Procedure Code  
Education Code  
Election Code  
Estates Code  
Family Code  
Finance Code  
Government Code  
Health and Safety Code  
Human Resources Code  
Insurance Code  
Labor Code  
Local Government Code  
Natural Resources Code  
Occupations Code  
Parks and Wildlife Code  
Penal Code  
Property Code  
Special District Local Laws Code  
Tax Code  
Transportation Code  
Utilities Code  
Water Code
http://www.tlc.state.tx.us/code_overview.htm
STATUTORY INTERPRETATION

• TEXAS HAS STATUTES ON HOW TO INTERPRET STATUTES

• SLIGHTLY DIFFERENT INTERPRETATIONS FOR ITEMS IN CODES v. STATUTES (v. SPECIAL RULES OF INTERPRETATION)
Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

1. object sought to be attained;
2. circumstances under which the statute was enacted;
3. legislative history;
4. common law or former statutory provisions, including laws on the same or similar subjects;
5. consequences of a particular construction;
6. administrative construction of the statute; and
7. title (caption), preamble, and emergency provision.
Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

UCC; UEFJA; UCCAJEA
Sec. 312.005. LEGISLATIVE INTENT. In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

Sec. 312.006. LIBERAL CONSTRUCTION. (a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.

(b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.
RESEARCHING TEXAS LEGISLATIVE HISTORY
GOOD NEWS

<table>
<thead>
<tr>
<th>Official Documents of Legislative History</th>
</tr>
</thead>
<tbody>
<tr>
<td>The following official documents are used to compile legislative history. These are listed roughly in the order of importance:</td>
</tr>
<tr>
<td>• Interim Reports</td>
</tr>
<tr>
<td>• Conference Committee Reports</td>
</tr>
<tr>
<td>• House public hearings</td>
</tr>
<tr>
<td>• Senate public meetings</td>
</tr>
<tr>
<td>• House Research Organization</td>
</tr>
<tr>
<td>• Senate Research Center Reports</td>
</tr>
<tr>
<td>• House Committee minutes</td>
</tr>
<tr>
<td>• Senate committee minutes</td>
</tr>
<tr>
<td>• Texas House and Senate Journals</td>
</tr>
<tr>
<td>• Texas Legislative Council materials</td>
</tr>
</tbody>
</table>

+ MISSING STUFF

NO!
We initially recognize that nothing in the legislative history of Chapter 64 indicates a legislative intent to foreclose an appeal of the convicting court's Chapter 64.03(a)(2) determinations.\(^{(14)}\) ...The House Criminal Jurisprudence Committee later amended the Senate Jurisprudence Committee's version of Article 64.05 to authorize an "appeal of a finding under Article 64.03 or 64.04." The House Criminal Jurisprudence Committee bill analysis explained that this amendment "provides for an appeal of a convicting court's determination to order testing"\(^{(16)}\) under Article 64.03, and the House Research Organization bill analysis also explained that this amendment authorized "[a]ppeals of orders for tests [under Article 64.03] or of findings about test results [under Article 64.04]."\(^{(17)}\)
Outline of Texas Legislative History
http://www.lrl.state.tx.us/legis/legintent/legIntent.cfm

Compiling Texas Legislative History
http://www.lrl.state.tx.us/legis/legintent/LegIntentBrochure.pdf
STATUTORY INTERPRETATION

• Are the legislature and the judiciary speaking the same language?

• (A story told in three concurring opinions)
FURTHER, THERE ARE OTHER APPROPRIATE USES FOR LEGISLATIVE HISTORY

• “An appellate opinion is not a mere recitation of legal standards and conclusions. It is that, to be sure, but it is also, perhaps more importantly, one part of a dialogue between parties, citizens, legislators, and judges—a dialogue that provides a historical record of the relevant controversy.”

• “We tell these stories because doing so is crucial to our legitimacy. Our judgments carry with them a threat of state authority. As justification for the coercive impulse behind our decisions, we give not only a conclusion but also a narrative, by which we seek to legitimize our decision by placing it in historical context, demonstrating that it is consistent with our notions of justice—and, indeed, that it comports with the state of the law.”
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“So long as judges resort to external materials even when statutes are clear, lawmakers and lobbyists will keep peppering the legislative record with their preferred interpretation, not to inform legislators enacting statutes but to influence judges interpreting them. And then, when litigation ensues, statutory construction devolves into statutory excavation. The legal scavenger hunt begins, and the often-contradictory tidbits are unearthed and cited—perhaps inaccurately, selectively, or misleadingly—in order to hoodwink earnest judges and enable willful ones to reach a decision foreclosed by the text itself.”
The Court says the Code Construction Act "guides our analysis" and permits consideration of several extratextual factors beyond the Legislature's chosen language, including legislative history. The Act, phrased in permissive language ("a court may consider"), indeed invites judges to consult factors like legislative history "whether or not the statute is considered ambiguous on its face." Several of our cases, both before and after enactment of the Code Construction Act, posit a simpler and less-manipulable principle: unambiguous text equals dispositive text.
Hecht (Concurring) in Entergy

• Only every so often do we come right out and brand a text with the a-word, as if it were a mark of shame. It seems nicer to call a statute unclear or better yet, just leave that implication. But the truth is that the meaning of statutory language is often reasonably disputed and therefore ambiguous to some extent, and resolving reasonable disputes with reason, rather than by denying their reasonableness, would result in a sounder jurisprudence.
HECHT: “Two great evils attend this course”

• One is that judges will use analysis of reasonable disagreements over meaning as a guise for substituting their own preferences in place of the legislature’s. This would trespass upon the boundary between judicial and legislative spheres that is fundamental to our structure of government.

• The other is that in the search for the meaning of a statutory provision, courts will grasp at all sorts of statements made before, during, and after the process of enactment, whether by legislators or others, as relevant or even authoritative.
The supreme court sometimes agrees with the Code Construction Act: “Even when a statute is not ambiguous on its face, we can consider other factors to determine the Legislature’s intent, including...the legislative history.” *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001). On the other hand: “if a
This leads to a conundrum. Texas’s confusion in the common-law about statutory interpretation is based on an internal contradiction: When a court says it is limited to considering the plain meaning of the text of statutes, the court can make that statement only by refusing to follow the plain meaning of the text of a statute that says the courts are not limited to the text of statutes.
Other Helpful Items You May Want to Consider

THE ART OF STATUTORY CONSTRUCTION: TEXAS STYLE
Ron Beal

• http://www.baylor.edu/content/services/document.php/180393.pdf
MODELS OF STATUTORY INTERPRETATION APPLIED TO YOUR DAILY PRACTICE

By Hon. Adele O. Hedges and Roger D. Townsend

• http://www.adjtlaw.com/assets/RT%20&%20AH%202007%20statutory%20interpretation.pdf

• (For the Parable of Prof. Dow’s Goldfish)
Reading Statutes and Bills
By Texas Legislative Council

MODERN PROBLEMS
Question 1

- Pick the correct answer- All the problems in statutory interpretation in Texas stems from:
  - The Legislature—because they can’t write clear laws
  - The Judiciary—because they look for statutory problems where none in fact exist; or
  - Lawyers—because they inappropriately use statutory interpretation to advance their client’s position
Question 2: What Other Uses of the Study of Statutory Interpretation and Regulation Exist?
Question 3: the $1B Question

Texas Supreme Court Grapples With Billion-Dollar Question

by Jim Malewitz  March 8, 2016  2 Comments

Editor's note: This story has been corrected and updated.

With billions of dollars at stake, the Texas Supreme Court heard arguments Tuesday in a tax showdown whose outcome could shake up the next legislative session while straining the historically friendly relationship between state lawmakers and the iconic oil and gas sector.

Throughout a spirited debate over arcane accounting rules and oil-tinged science, the justices offered few clues as to how they might rule.
Section 151.318. Property Used in Manufacturing

(a) The following items are exempted from the taxes imposed by this chapter if sold, leased, or rented to, or stored, used, or consumed by a manufacturer:

(2) tangible personal property directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:
PETITIONER’S ARGUMENTS

The plain language of the Texas Tax Code exempts from sales-tax equipment used in processing goods

I. Tax Code § 151.318 exempts equipment used to process personal property—including severed minerals

A. The text of the statute plainly exempts a broad category of goods used in three activities: manufacturing, fabricating, and processing

B. Processing: something is treated or prepared in some way that causes or makes a change in it. The thing may still be essentially the same—sulfur remains sulfur, oil remains oil, coal remains coal—but it has been altered in some way as a result of processing
Respondent’s Argument

I. The Manufacturing Exemption Must Be Interpreted Narrowly, with Any Doubts Resolved Against Southwest. ................................................................. 10

A. Tax Exemptions Are Narrowly Construed Because They Grant a Public Subsidy to a Select Few at the Expense of Other Taxpayers........................................... 11

B. Previous Attempts to Judicially Broaden the Manufacturing Exemption Have Been Rejected by the Legislature. ................................................................. 12

II. The Manufacturing Exemption Does Not Apply Because Extraction of Minerals From Underground Formations Is Not “Actual Manufacturing, Processing, or Fabrication of Tangible Personal Property.” ........................................... 14