

TEXAS BUSINESS & COMMERCIAL QUARTERLY

★ JOHN W. FAINTER, JR. ★ SECRETARY OF STATE ★

The review of legislation contained in this month's *Quarterly* was prepared by the staff of the Office of the Secretary of State. We hope that it alerts interested parties to any changes which may affect their dealings with this Office. It is not intended to be an exhaustive study of the legislation. Should any bill be of particular interest, we recommend you get a copy of the bill. The economic commentary in this issue was written by Celia Morgan and Howard Savage, professors in the Department of Finance and Economics at Southwest Texas State University, and was based on data collected by the Secretary of State's Office.

SELECTED HIGHLIGHTS OF THE REGULAR SESSION OF THE SIXTY-EIGHTH LEGISLATURE

A review of the legislation enacted by the 68th Legislature indicates that several of the bills passed will affect business and commercial filings in the Office of the Secretary of State. Of particular note are Senate Bills 989 and 420, which increase statutory filings fees collected by the Secretary of State. Corporation filing fees will be increased as follows:

Articles of Incorporation for business corporations	\$200 plus \$100 franchise tax prepayment for a total of \$300
Articles of Incorporation for professional corporations	\$200 plus \$100 franchise tax prepayment for a total of \$300
Name Reservation	\$25
Articles of Association for professional associations	\$200
Articles of Amendment for professional associations	\$100
Annual Statement for professional associations	\$35
Articles of Dissolution for business and professional corporations and professional associations	\$25

Application for Reinstatement following forfeiture under the Texas Tax Code	. \$50
Assumed Name Certificates for Incorporated Businesses or Professions	.\$25
Abandonment of Assumed Names for Incorporated Businesses or Professions	.\$10

These fees are effective September 1, 1983 except for the fees for articles of incorporation for business and professional corporations and name reservations, which went into effect on May 20, 1983.

Filings fees for Uniform Commercial Code transactions were also changed by Senate Bill 989. The fee for UCC-1's (original financing statements) and UCC-3's (changes to the financing statements) in standard form will be increased from \$3 to \$5; non-standard filings will increase from \$6 to \$15. The definition of a non-standard filing has been expanded to include any filing accompanied by attachments.

Notary commissions will be raised to \$10. Along with the commission fee, a notary applicant should submit a \$4 filing fee for the bond, making the total fee payable to the Secretary of State \$14.

Trademark registrations and renewal fees were hiked to \$25. Assignments of trademarks will be \$10.

Under the Automobile Club Services Act, an Automobile Club pays a registration fee for each salesman or agent employed by the Club to sell memberships. The registration fee will be raised from \$3 to \$5 per salesman.

The Secretary of State issues official certificates evidencing facts discernible from the records on file in the office. Fees for these official certificates will be increased to \$5. Examples of these certificates include: certificates of existence for corporations, certificates of service on the Secretary of State, and certificates of notary appointment.

When the Secretary of State searches the records on file in the office and produces written evidence of that search in a form other than copies of documents or certificates, Senate Bill 989 permits the Secretary of State to charge \$2 per search. Senate Bill 989 also eliminates several fees, including the \$2 commission fee for state elected and appointed officials and the fees for recordation of home rule city charters.

In addition to increasing the fees for Articles of Incorporation and name reservations, Senate Bill 420 changes sections of the Texas Business Corporation Act relating to registered agents. Article 2.10-1 of the Act was amended to allow simultaneous filings by a registered agent to record a change of address without need for original signatures on each change. A limit of \$500 was set for the fee for such simultaneous filings of change of address. Senate Bill 420 also eliminated the fee presently assessed when a registered agent submits a resignation to the Secretary of State.

Other changes affecting the practice of corporate law are embodied in House Bill 449 and Senate Bill 559. House Bill 449 makes clear that a plan of merger can provide that stock of a merging corporation can be exchanged for cash or securities of a corporation other than the surviving corporation. Senate Bill 559, which was proposed by the State Bar of Texas, amends the corporate indemnification provisions to bring the Texas provisions more in line with the indemnification provisions of the Model Business Corporation Act. Additionally, many of the financial provisions of the Texas Business Corporation Act are modified to conform to generally accepted accounting practices.

Two pieces of legislation deal with agricultural enterprises. House Bill 669 amends quorum and voting requirements for agricultural marketing associations. Senate Bill 866, 'The Agricultural Development Act,' authorizes counties to create nonprofit corporations for the purpose of providing financing of agricultural enterprises and facilities. This appears to be similar to existing statutes allowing the creation of industrial development and housing finance corporations.

House Bill 622 amends provisions of the Texas Nonprofit Corporation Act to provide for the organization of a nonprofit corporation, the purpose of which is to assist a 'state agency. State agency is defined as:

- (a) a board, commission, department, office, or other entity that is in the executive branch of state government and that was created by the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Texas Education Code, as amended;
- (b) the legislature or a legislative agency; or
- (c) the Supreme Court, the Court of Criminal Appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

No officer or employee of an agency that is being assisted by the corporation may serve as an officer or director of the corporation. Nonprofit corporations dedicated to the assistance of a particular agency are required to file a fiscal report with the Secretary of State annually.

The Texas Business Opportunity Act (Article 5069-16.01 *et seq.*) was amended in Senate Bill 1321 to delete the exemption from registration of the 'product' or 'package' franchise as defined by the Federal Trade Commission. Additionally, the registration requirement was limited to the 'principal' seller of a business opportunity. The bill also made a technical correction of an error in the original legislation.

Other legislation will affect the rulemaking and administrative hearings sections of the Administrative Procedure and Texas Register Act (APTRA). House Bill 1487, for instance, outlines the procedure by which the State Board of Insurance may promulgate certain rules and rates, while it exempts specific board actions from the Administrative Procedure and Texas Register Act. The bill enables either the board on its own motion or any interested person to initiate proceedings with respect to the rules and rates in Chapter 5 of the Insurance Code. A hearing may then be scheduled, at the board's discretion, and notice of such hearing shall be published in the *Texas Register*. Upon compliance with the provisions in the bill, the board may adopt a rule concerning any matter specified in Chapter 5. The board must then publish notice of its action in the *Texas Register*, although it need not comply with the requirements of the Administrative Procedure and Texas Register Act.

Senate Bill 117, which provides a framework for the state's disbursement of block grant funds, specifically applies the Administrative Procedure and Texas Register Act's provisions for administrative hearings and judicial review to the administration of grant programs. The bill also requires that notice of hearings concerning the block grants be published in the *Texas Register*.

Two bills of general interest amend the Administrative Procedure and Texas Register Act's procedures for contested cases. Senate Bill 621 amends Section 13 of the Act by allowing public hearings on contested cases to be continued from time to time and from place to place if certain criteria are met. House Bill 1454 amends Section 19 of the Act by adding language which permits an agency record to be filed and admitted as evidence before a reviewing court.

House Bill 1310 amends the Administrative Procedure and Texas Register Act by making Section 19(b)(1), relating to the place to file a petition requesting judicial review, inapplicable to Section 32.18 of the Alcoholic Beverage Code.

Bills that will require additional information or that will change the nature of material published in the *Texas Register* include House Bills 2436, 179, and 2154. Under House Bill 2436, the comptroller must file on a quarterly basis gasohol reports to be published in the *Register*. Based on the estimates of the total volume of sales or uses of gasohol and the total amount of credits allowed to distributors during the subsequent quarter, these reports will set the maximum amount of credits which may be claimed by distributors for gasohol produced inside and outside the state of Texas.

House Bill 179 requires a state agency, when considering adoption of a rule, to prepare a statement explaining the effect the rule will have on small businesses. This statement must be included when notice of the proposed rules is filed with the Secretary of State for publication in the *Texas Register*. Additionally, the bill provides that the agency appropriately amend rules to reduce any adverse effect on small businesses.

House Bill 2154, which creates the Public Standards Advisory Commission, amends the APTRA by requiring the commission to forward summaries of requests for opinions and summaries of opinions to the Secretary of State for publication in the *Register*.

This review of recent legislation is not intended to be an exhaustive study. Copies of individual bills of interest may be obtained from the Appointments, Campaign, and Legislative Filings Section of the Office of the Secretary of State. This section may be contacted by calling (512) 475-5619 or writing:

Secretary of State
Appointments, Campaign, and Legislative Filings Section
P.O. Box 12887
Austin, Texas 78711

The cost for plain copies is \$0.55 for the first page, and \$0.15 per page thereafter.

SECRETARY OF STATE BAROMETERS

Business and commercial data accumulated by the Secretary of State include total transactions, net additions to the business stock, commercial code filings, and corporate charters granted by standard metropolitan statistical area. The first quarter figures for the data reported in our continuing series are discussed in the following sections.

Total Transactions

Business related activity, determined by the total transactions recorded by the Statutory Filings Division of the Texas Secretary of State's Office, indicates that the business ac-

tivity and expansion noted in 1982 continued in the first quarter of this year. Total transactions recorded by the Secretary of State for the first three months of 1983 are presented in Table 1. The Corporations Section recorded 51,923 total transactions in the first quarter, an increase of 5,915 over the same quarter of last year, but down 2,313 from the previous quarter.

The data in Table 1 show that during the first quarter of 1983, there were slower rates for both the entry of new businesses and the exit of existing businesses, when compared with the transactions of the fourth quarter of 1982. The

Table 1

TYPE OF TRANSACTIONS	1983 FIRST QUARTER	1982 FOURTH QUARTER	CHANGE FROM 4TH QUARTER 1982 TO 1ST QUARTER 1983	1982- FIRST QUARTER	CHANGE FROM 1ST QUARTER 1982 TO 1ST QUARTER 1983
TOTALS	51,923	54,236	(2,313)	46,008	5,915
Articles of Incorporation	10,812	12,043	(1,231)	10,124	688
Articles of Incorporation (non-profit)	1,047	1,078	(31)	901	146
Professional Corporations	155	326	(171)	489	(334)
Professional Associations	67	143	(76)	324	(257)
Certificates of Authority	829	890	(61)	889	(60)
Limited Partnerships	1,014	1,633	(619)	969	45
Limited Partnership Amendments	936	1,083	(147)	655	281
Limited Partnership Cancellations	62	76	(14)	50	12
Trust Companies	0	3	(3)	0	0
Trust Companies Amendment	4	2	2	3	1
Articles of Amendment (profit)	3,890	3,623	267	3,394	496
Articles of Amendment (non-profit)	229	228	1	195	34
Articles of Amendment (professional corporation)	34	44	(10)	69	(35)
Articles of Amendment (professional association)	867	150	717	41	826
Amended Certificate of Authority	338	348	(10)	261	77
Articles of Corrections	117	94	23	0	117
Name Reservations	3,145	2,662	483	2,801	344
Name Registration	105	72	33	67	38
Dissolutions	1,062	1,471	(409)	914	148
Withdrawals	198	169	29	133	65
Terminations	67	58	9	42	25
Information Letters	3,964	4,607	(643)	3,417	547
Articles of Merger	179	229	(50)	180	(1)
Change of Registered Agent and Office	2,906	2,750	156	4,068	(1,162)
Reinstatements	881	687	194	815	66
No Pay Forfeitures	36	17	19	35	1
Forfeitures	828	816	12	78	750
Certifications	16,573	17,618	(1,045)	13,892	2,681
Assumed Names	1,578	1,316	262	1,202	376

slower entry rate for the first quarter of 1983 is demonstrated by the following data.

—Filings for new corporate charters decreased by 10%, with 10,812 charters filed.

—Filings for certificates of authority dropped by 7%, with 829 certificates filed.

—Filings for new limited partnerships declined by 28% with 1,014 limited partnerships filed. The slower exit rate for the fourth quarter of 1982 is evinced by 409 fewer dissolutions filed, a 38% decrease from dissolutions registered during the last three months of 1982. Name reservations, a harbinger

of future new business activity, were 14% above reservations in the fourth quarter.

However, the data in Table 1 suggest a more favorable business climate in Texas in the first quarter of this year in comparison with the same quarter one year ago. New corporate charters and new limited partnerships were up 7% and 5%, respectively. The decrease of 1,162 in the changes of registered agent and office, which occurred during the first three months of 1983, compared with the same time period one year ago, also suggests a more stable business climate.

Net Additions to the Business Stock

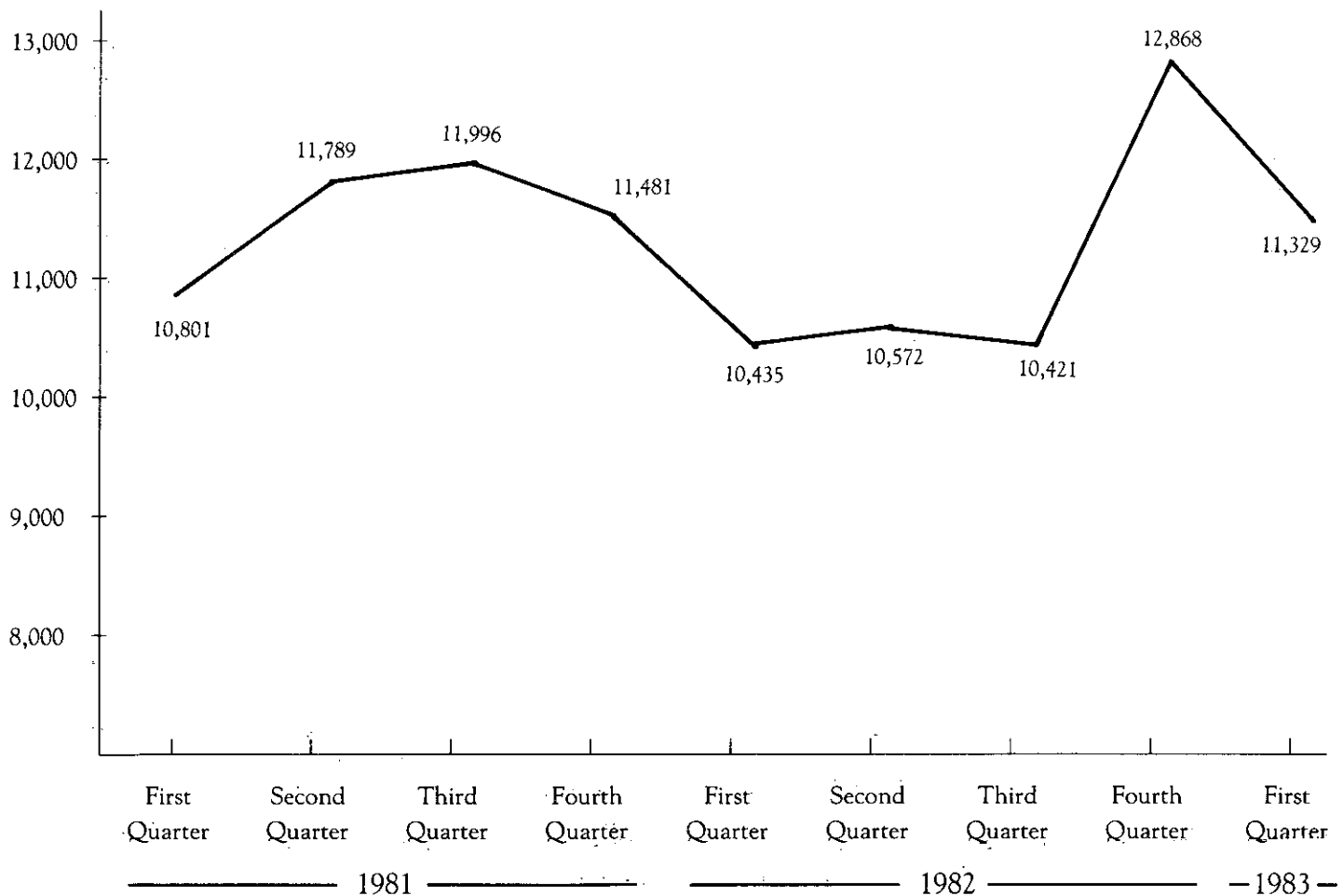
The quarterly net additions to the business stock for 1981 through the first quarter of 1983 are shown in Figure 1. These data suggest a slow but steady expansion of the Texas business community. The 11,329 additions to the business stock, which occurred during the first quarter, suggest that Texas can expect an increase of 45,316 in the business stock if expansion continues at the same rate throughout 1983. These expected net additions imply a 2% growth of the Texas business stock in 1983. The 11,329 additions from January through March of 1983 are 88% of the additions recorded in the fourth quarter of 1982, and are 9% greater than additions recorded during the first quarter one year ago.

The business stock includes all existing corporations, limited partnerships, and certificates of authority recorded by the Secretary of State. The revised net additions to the business stock equal the sum of new corporate charters, new limited partnerships, and new certificates of authority minus the sum of voluntary dissolutions, withdrawals, and terminations.

UCC Filings

The first quarter increase in the growth of the Texas business structure is supported by the data recorded at the Uniform Commercial Code Section of the Secretary of State's Office. The growth rate of the annual UCC filings, implied

Figure 1
Net Additions to the Business Stock by Quarter
1981 1983



Source: Secretary of State, Statutory Filings Division, Corporations Section (January, 1983)

by the 1983 first quarter UCC filings, is shown in Figure 2. The 125,798 UCC filings during the first three months of 1983 are 17% greater than filings recorded during the same time period in 1982.

The dollar value of these filings is not known because the filings have no stated value when filed with the Secretary of State's Office. If, however, the real value per unit does not change, the greater number of UCC filings indicates increased credit requirements. Increased credit requirements may arise from stepped-up business activity and from credit extensions desired by existing businesses.

New Business Incorporation in SMSA Areas

The absolute numbers of new charters granted in each of the 26 Texas Standard Metropolitan Statistical Areas for the first quarter of 1983 are shown in Table 2. These data show 9,877 new charters granted in Texas' SMSAs during the first three months of this year, about 91% of all new charters granted. These 9,877 new businesses represent a

Figure 2
Index of Uniform Commercial Code
Financing Statements, Federal Tax Liens
and Utility Security Agreements



Source: Secretary of State, Statutory Filings Division, Uniform Commercial Code Section (October 1982)

Table 2
New Business Incorporations by
Texas Standard Metropolitan Statistical Area

	JANUARY	FEBRUARY	MARCH	1ST QUARTER TOTALS	1983 TOTALS
Abilene	34	30	33	97	97
Amarillo	24	25	31	80	80
Austin	195	169	252	616	616
Beaumont-Port Arthur-Orange	45	39	39	123	123
Brownsville-Harlingen-San Benito	37	28	44	109	109
Bryan-College Station	18	22	25	65	65
Corpus Christi	54	51	77	182	182
Dallas-Ft. Worth	1,085	1,065	1,323	3,473	3,473
El Paso	51	48	73	172	172
Galveston-Texas City	29	28	43	100	100
Houston	1,034	1,117	1,212	3,363	3,363
Killeen-Temple	18	12	25	55	55
Laredo	9	15	18	42	42
Longview-Marshall	22	28	41	91	91
Lubbock	26	31	34	91	91
McAllen-Pharr-Edinburg	33	37	41	111	111
Midland	43	36	38	117	117
Odessa	26	29	27	82	82
San Angelo	16	16	17	49	49
San Antonio	169	192	194	555	555
Sherman-Denison	7	9	13	29	29
Texarkana	9	1	6	16	16
Tyler	31	22	32	85	85
Victoria	17	13	12	42	42
Waco	26	27	22	75	75
Wichita Falls	20	17	20	57	57
Totals	3,078	3,107	3,692	9,877	9,877

Source: Secretary of State, Statutory Filings Division, Corporations Section, April 1983

7% increase compared with the same quarter one year ago, but indicate a 9% decline from new charters granted in SMSAs during the fourth quarter of 1982.

Texas' four largest metropolitan areas continued to provide the majority of new employment opportunities. The Dallas/Fort Worth Metroplex led all SMSAs with 3,473 new charters (35.3%), followed closely by Houston with 3,363 (34.0%). Austin with 688 new charters (6.2%) and San Antonio with 577 new charters (5.6%) were the other major centers of charter activity.

In comparison to the fourth quarter of 1982, the Dallas/Fort Worth Metroplex again increased its percentage of SMSA filings, increasing from 34.4% to 35.3%. Houston and Austin also increased their percentages .4 of one percentage point, 34.0% and 6.2%, respectively (Figure 3).

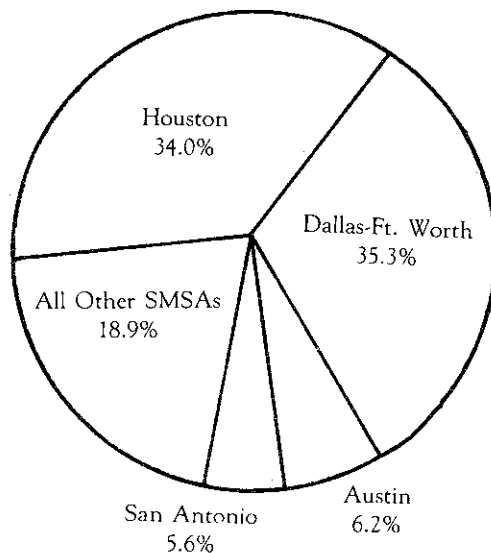
CONCLUSION

No clear picture of the Texas economy emerges from the information presented by the first quarter statistics. The economy may be viewed as taking a breather. The tempo of business activity has slackened when compared with the fourth quarter of 1982 but has clearly grown when compared with the first quarter of one year ago.

Most observers agree that the long awaited recovery of the national economy has commenced. If so, the national recession not only arrived in Texas late but visited a relatively brief period of time. We look forward to the data for the second quarter of 1983 which should indicate the national economic recovery's impact on the direction and magnitude of growth in Texas.

Figure 3

Breakdown of New Business Incorporations by SMSA
January March, 1983



Source: Secretary of State, Statutory Filings Division, Corporations Section, April 1983



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