

Memorandum



DATE April 1, 2011

TO The Honorable Mayor and Members of the City Council

SUBJECT **82nd Session – State Legislative Update**

On Wednesday, April 6, 2011, Assistant City Attorney Larry Casto will provide you with an update on the 82nd Session of the Texas Legislature. He will focus on pending legislation impacting the City of Dallas, with emphasis on State decisions that could potentially negatively impact local government budgets. Attached are the briefing materials for you to review in preparation for Wednesday's discussion.

Please contact me if you have any questions.



Mary K. Suhm
City Manager

c: Deborah Watkins, City Secretary
Thomas P. Perkins, Jr., City Attorney
Craig Kinton, City Auditor
Judge C. Victor Lander, Administrative Judge
Ryan S. Evans, First Assistant City Manager
A.C. Gonzales, Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Forest Turner, Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Frank Libro, Public Information Office
Helena Stevens-Thompson, Assistant to the City Manager

82nd Session - State Legislative Update
April 6, 2011

Section I Budget Impacts

Mixed Beverage Tax Reimbursements

HB1 & SB1 reduce the amount allocated to cities from the current rate of 10.7143 to 8.3065 percent. This reduction would result in a state-wide cut of approximately \$26 million per year.

Potential Revenue Loss: \$1.8M

Increased Traffic Fines

HB 258 (Gonzalez, Naomi) increases traffic fines from \$30-\$50. The House Ways and Means Committee passed a bill to increase the state's take from every city traffic ticket, skimming off an additional \$42 million per year from city traffic fines.

Potential Revenue Loss: \$2.6M

Red Light Cameras

HB 1561 (Orr) and SB 500 (Jackson, Mike) eliminate the City's authority to implement a red light camera program. In the City of Dallas, red-light related accidents have decreased 61% since 2007 at intersection approaches with red light cameras. HB 1792 (Gutierrez) allows the state to keep 100% of the revenue after costs are covered.

Potential Revenue Loss: \$1.6M

HB 887 (Geren) calls for a voter referendum before a red light camera program can be implemented.

Potential Cost: \$1,200

Posting of Financial Information

HB 1153 (Paxton) requires the comptroller to maintain an internet portal on which financial information for all political subdivisions must be posted.

Potential Cost: \$4.4M

Texas Fire Commission

HB1 & SB1 proposed cuts to the Texas Fire Commission. A House Rider would raise the firefighters' fees from the current \$35/year to \$85/year to fund the Commission.

Potential Cost: \$108,800

Pension

Current law states that the governing board of any public retirement system may vote to make an annual contribution to the State Pension Review Board not to exceed 50 cents for each active member and annuitant of the retirement system. SB 1612 (Ogden) would make that 50-cent fee mandatory.

Potential Governing Board Cost: \$11,000

Air Quality

HB 820 (Farrar) requires entities that own or operate a major source of emissions to purchase, install, and maintain fence-line monitors or develop alternative monitoring plans.

Potential Implementation Cost: \$2.5M

Potential Annual Monitoring/Reporting Cost: \$200,000

Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE)

HB 1 & SB 1 reduce \$500,000 in funding for License and Approved Courses. In 2010, Texas Automobile Burglary and Theft Prevention Authority (TABTPA) awarded \$14.1 million in grants to local police departments. Those grants were funded by a \$1 annual fee on auto insurance policies in the state. The bills would continue that fee, but would divert the revenue into the state's general fund.

Potential Grant Funding Loss: \$233,000

Texas Parks and Wildlife Department

HB1 & SB1 drastically reduces local parks grant funding from \$36M/biennium to \$868,000 for the upcoming biennium. These funds are secured through sales tax on sporting goods.

Potential Grant Funding Loss: \$2M

Department of Motor Vehicles/Texas Automobile Burglary and Theft Prevention Authority (TABTPA)

HB1 & SB1 cut TABTPA funding to \$2.1M. This program awards grants to police departments to assist in preventing and investigating automobile theft. In 2010, TABTPA awarded \$14.1 million in grants to local police departments.

Potential Grant Funding Loss: \$607,000

Texas Department of Housing and Community Affairs (TDHCA)

HB1 & SB1 eliminate \$20M in state aid for the 8 largest cities to provide housing and case management for the homeless. A rider has been filed in the Senate to restore this cut.

Potential Grant Funding Loss: \$1.7M

Texas State Library and Archives Commission

HB1 & SB1 reduce funding for the Lone Star Library Grant Program by \$20 million. Funding for the State Library and Archives Commission is reduced and a fee established for TexShare Membership.

Potential Grant Funding Loss: \$547,016

Potential Cost: \$2.39M in fees

Texas Commission on Environmental Quality:

HB1 initially eliminated funding for the Low Income Vehicle Repair, Replacement and Retrofit Program (LIRAP). **HB1** reduces funding for the Texas Emission Reduction Plan (TERP) by 51 percent. However, an amendment has been filed to reinstate funding for LIRAP and increase funding for TERP. There is also a rider bill to reinstate funding for both programs. The City of Dallas wrote letters to House Appropriators opposing the initial cuts and asking members of the delegation to support the partial restoration in funding.

Potential Funding Loss: Unable to determine

Film Incentives

The Film Incentive Program could face reductions from its prior level of \$62M/biennium to \$10M for the 2012-2013 biennium. In fiscal year 2009-2010 productions shot in Dallas received \$13.9M in Texas incentives which generated local net revenue of \$963,000, according to the Dallas Film Commission.

Potential Funding Loss: \$963,000

Section II Legislative Items of Concern to the City of Dallas

Revenue Caps

Current Texas law requires each taxing unit to calculate and publish a rollback tax rate. The rollback tax rate provides the taxing unit approximately the same amount of revenue it spent the previous year for day-to-day operations plus an extra 8 percent cushion, and sufficient funds to pay its debts in the coming year. **SB 720** (Williams) lowers the rollback rate from 8 percent to 5 percent. The City has voiced its opposition to this bill.

Franchise Fees/Video franchising

In FY 10 the City of Dallas received \$102M in franchise fees. The City continues to monitor bills to ensure that these fees are protected.

SB 1087 (Carona) and **HB 256** (Hilderbran) allow cable companies to terminate their local municipal franchises early and begin operations under a state-issued franchise. Dallas' franchise with the major cable provider expires in 2015. Dallas was successful in amending the bill to exclude I-NET obligations by the cable provider from early termination. SB 1087 contains a provision that also makes its passage contingent upon the passage of **SB 259** (Eisland). SB 259 imposes a video assessment fee on all video service providers, including satellite TV services. Revenue generated for cities statewide is estimated to be about \$64 million, with an estimated \$4.5-5 million of that to be additional revenue for the City of Dallas.

Electric Utility Stream-lined rate-making

SB 1693 (Carona) and **SB 3610** (Thompson) have generated a great deal of concern among cities. As filed, these bills generally allow for electric transmission utilities to bypass city-jurisdiction and apply directly to the PUC for increases in allowable rate charges. Both bills have been heard in committee and are pending. Recent substitutes have contained some beneficial amendments for cities, such as allowing the utilities to apply to the PUC for rate adjustments on capital investments only. However, serious concerns remain on issues such as expense reimbursement for cities, preclusion of a city from negotiating a tariff that differs from the Commission's, frequency of rate reviews, and several other matters.

Scrap Metal

Metal theft legislation has been an issue for several sessions now. While the City has a strong ordinance, we are trying to add additional legislative provisions for state-wide application. On Tuesday, after strong negotiations with the metal industry, law enforcement reached an agreement with Senator West's office using **SB 694** (West) as the primary bill.

We believe the compromise meets several law enforcement needs such as:

- a criminal penalty for failing to register (Class B misdemeanor)
- added regulated materials such as catalytic converters
- requires a seller to prove right of possession to sell HVAC parts
- requires metal yards to take photographs of seller & purchased regulated material
- requires electronic reporting to DPS within 2 days of transaction
- allows municipalities who currently have No Cash ordinances to maintain the ordinance

Towing

The City of Dallas, by ordinance, requires towing of vehicles of drivers who do not possess automobile insurance as required by state law. **HB 1047** (Schwertner & Phillips), as filed, preempted the City's ordinance by requiring both the absence of a driver's license and insurance before a vehicle could be towed. After extensive negotiations, the bill as voted out of committee tracks the City's ordinance, providing that a vehicle may be towed without insurance. This raises the question of 'why the need for the legislation now?'

Section III City's Legislative Agenda

Payday Lenders

SB 251 (West) and **HB 1323** (Johnson, Eric) aim at reforming payday lending practices by prohibiting third-party fees to arrange or guarantee certain extensions of consumer credit. The City of Dallas testified at House and Senate Committee hearings. The bills face long odds of passing.

Juvenile Case Management

HB 408 (Walle) establishes minimum standards for juvenile case managers. **HB 409** (Walle) relates to supervision of certain juvenile case managers and requires the judge of a court to supervise the juvenile case manager. The City of Dallas testified at the House Committee hearing and offered an amendment to allow cities to determine which department will house the case managers while retaining the involvement of the judge. The author accepted the amendment. Both bills are currently pending in committee.

Boarding Homes

HB 216 (Menendez et. al) was passed and enrolled during the 79th Legislative Session. This bill relates to the regulation of certain boarding home facilities and assisted living facilities and providing penalties. The City of Dallas hoped to amend this legislation in 2011 to address concerns regarding municipal enforcement of the registration standards. However, the author was not amenable to such amendments.

Convention Center Hotel

HB 3341 (Anchia) provides for the Comptroller to deposit eligible, taxable proceeds related to a qualified hotel project in trust in a separate suspense account of the project. A suspense account is outside the state treasury and allows for rebate, refund, or payment without the necessity of an appropriation.

Public Private Partnerships - SH 183

HB 2186 (Harper-Brown) and **SB 1145** (Shapiro) relate to comprehensive development agreements for State Highway 183. The bills would allow the Texas Department of Transportation (TxDOT) to enter into public private partnerships for the 9.1 miles of State Highway 183 from Dallas through Irving. The City of Dallas testified in support of these bills at the Senate Committee on Transportation and Homeland Security.

Public Improvement Districts

Legislation providing for non-contiguous properties to be included in a PID, **SB 1369** (West) and **HB 3690** (Anchia) have been filed. SB 1369 has been heard in the Senate committee and is pending. **HB 3452** (Anchia) and **HB 2860** (Davis, Yvonne), allowing for the capture of a portion of the increase in the value of

property in a PID by the district, have been filed and are awaiting hearings in committee. These bills would facilitate the construction of the City's street car system.

ATM Theft

SB 922 (Carona) passed the full Senate. The identical bill passed out of House Criminal Jurisprudence committee this week. The bills provide consistency in the charge for ATM theft or any contents or components of the machine making it a Second Degree Felony

Sexually Oriented Businesses

SB 1030 (Carona) passed favorably from the Senate Intergovernmental Relations committee. The bill will standardize the posting of intent for those seeking a Sexually Oriented Business License. Currently, the Government Code states that a person applying for a Sexually Oriented Business License shall post intent to apply for such license **"for a location not previously licensed or permitted."** This bill simply changes the word "previously" to the word "currently", thereby allowing citizens of our state to be better informed of future SOB locations coming into their communities.

HB 175 (Jackson) was voted favorably from committee on March 22, 2011. The bill will place BYOB nightclub locations under regulation by the Texas Alcohol Beverage Commission. Currently, this type of location is unregulated at the state level.

Section IV Governor's Emergency Items

Eminent Domain

Governor Perry declared eminent domain an emergency item. As a result, SB 18, which passed on February 9th, makes several key revisions to current law, including requiring that condemning authorities make a good faith offer before condemning procedures begin, prohibiting the taking of private property unless it is for a public use, improving notice and disclosure by condemning entities, applying condemnation rules to all condemning entities, and providing property owners with the opportunity to buy back property at the original purchase price if the taken property is not used for its public purpose in 10 years, unless the condemning authority can meet 2 of the 7 following criteria to demonstrate that actual progress is made toward the public use: (1) performance of significant amount of labor; (2) provision of significant amount of materials; (3) hiring/significant performance of architect, engineer, surveyor to plat or replat; (4) application for state or federal funds to develop property; (5) application for state or federal permit to develop property; (6) acquisition of adjacent property for the same public purpose; (7) the adoption by the majority of the governing entity of a development plan that indicates that the entity will not complete more than 1 (one) of these items by the 10th anniversary of the property acquisition.

Sanctuary Cities

Governor Perry declared the eradication of sanctuary cities as an emergency item, although no standard definition of a sanctuary city exists. Interestingly, the Texas Department of Public Safety – a state agency – probably comes closest to being a sanctuary agency because it has a policy that it "will not engage in enforcement of federal immigration statutes."

CSHB 12 prohibits local governmental entities from undertaking certain actions that would restrict the enforcement of state and federal immigration law and allows the filing of a citizen complaint with the Attorney General's office. Entities found to be in violation would forfeit certain state funding.